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in the Supreme Court of the United States

October Term, 1980

THE STATE OF FLORIDA,
Petitioner,

vs.

SHEROLYN DENISE HARRISON,
Respondent.

On Petition for a Writ of Certiorari to the District Court of Appeal of Florida, Third District

BRIEF OF PETITIONER ON JURISDICTION

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QUESTION PRESENTED

WHETHER THE DECISION OF THE FLORIDA DISTRICT COURT, RELYING UPON THIS COURT'S DECISIONS IN *UNITED STATES V. MENDENHALL*, _____ U.S. _____, 100 S.Ct. 1870 (1980) and *REID V. GEORGIA*, _____ U.S. _____, 100 S.Ct. 2752 (1980) AND DIRECTLY CONSTRUING THE FOURTH AMENDMENT AS APPLIED TO THE STATES THROUGH THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION, HOLDING: 1) THAT THE MERE APPROACH OF A POLICE OFFICER IS A DETENTION/STOP; 2) THAT THE FACTS THEREFORE CONSTITUTE A STOP AND FURTHER THE FACTS DO NOT AMOUNT TO ARTICULABLE SUSPICION AND PROBABLE CAUSE; 3) THAT ALL CO-CALLED "PROFILE" TRANSACTIONS ARE ILLEGAL NO MATTER WHAT THE FACTS ARE UNDER *REID V. GEORGIA*, IS A MISAPPLICATION OF THE FOURTH AMENDMENT AND THIS COURT'S DECISIONS IN *REID* AND *MENDENHALL* AND IS IN DIRECT AND SUBSTANTIAL CONFLICT WITH THE RULE OF THIS COURT IN *UNITED STATES V. MENDENHALL*, *SCHNECKLOTH V. BUSTAMONTE*, 412 U.S. 218 (1973) AND *TERRY V. OHIO*, 392 U.S. 1 (1968)?

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PREFACE

The Petitioner, THE STATE OF FLORIDA, was the Appellee, in the District Court of Appeal of Florida, Third District, and the prosecution in the Florida trial court. The Respondent, Sherolyn Denise Harrison, was the Appellant in the Florida District Court and the defendant in the trial court. In this brief, the parties will be referred to as they appeared in the Florida trial court below.

The following references are made in this brief:

(A) For the portions of the record below sufficient to show jurisdiction in this court, which are contained in the Petitioner's Appendix and consist of page A1-A86.

I.

OPINIONS BELOW

The opinion of the District Court of Appeal of Florida, Third District, reversing the Florida trial court's denial of the Defendant's Motion to Suppress, is reported at *Harrison v. State*, 389 So.2d 293 (Fla. 3d DCA 1980). The opinion of the Florida District Court is contained in the State's Appendix at A72. There is no official reporter for citation to this opinion.

II.

JURISDICTION

On November 14, 1980, the District Court of Appeal of Florida, Third District, denied the State's timely Petition for Rehearing. A83. The State of Florida by timely Motion obtained an extension of time (per Justice Powell) in which to submit its Petition for Certiorari herein. The jurisdiction of this Court is invoked under the provisions of Title 28, United States Code, §1257(3) and Amendments IV and XIV of the United States Constitution.

The interpretation of the Florida Constitution and the United States Constitution are identical for purposes of the application of the criminal law and search and seizure issues. *Hetland v. State*, 366 So.2d 831 (Fla. 2d DCA 1979) *approved and adopted, Hetland v. State*, 387 So.2d 963 (Fla. 1980). The Florida District Court *per curiam* opinion, makes the Florida District Court the Florida Court of last resort herein as a matter of law. *See, Dodi Publishing Co. v. Editorial America S.A.*, 385 So.2d 1369 (Fla. 1980); *Jenkins v. State* 385 So.2d 1356 (Fla. 1980); *see, also, St. Paul Title Insurance Co. v. Davis*, _____ So.2d _____ (Fla. 1980), Fla.S.Ct. Case No. 59,245, opinion filed November 13, 1980. This Court therefore has jurisdiction. *See, Nash v. Florida Industrial Commission*, 389 U.S. 235, n.1. (1967); U.S.Sup.Ct.R.20.1. The constitutional issues were firmly presented at all levels below. *See*, A2-3; A84-A86.

III.

CONSTITUTION AND STATUTORY PROVISIONS

Amendment IV of the Constitution of the United States provides that:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Amendment XIV of the Constitution of the United States provides that:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

IV.

STATEMENT OF THE CASE

The Defendant, Sherolyn Denise Harrison, was charged by information with "possession" and "trafficking" in cocaine in violation of Sections 893.13 and 893.135 Florida Statutes, arising out of her attempt on August 9, 1979, to transport more than one hundred and forty (140) grams of cocaine in her infant child's diaper, through Miami International Airport. The Defendant filed a pretrial Motion to Suppress, in which she claimed her Fourth and Fourteenth Amendment rights under the United States Constitution were violated. *See*, A1-A4. The Florida trial court denied the Defendant's Motion to Suppress after a hearing.

At the hearing upon the Motion to Suppress, the State produced one witness, Detective Jody Wolfe of the Airport Narcotics Unit of the Organized Crime Bureau of the Dade County Public Safety Department. *See* A 9. Detective Wolfe testified that she had been a police officer for six (6) years and had been with the airport unit approximately one (1) year at the time of the incident herein. A9-A10. Detective Wolfe further testified as to her extensive training and experience in narcotics investigation both formal in informal including programs and courses conducted by local colleges; the State Attorney's Office; the Organized Crime Bureau and the Drug Enforcement Agency of the federal government. A10-A11. Wolfe indicated that her position and assignment is the detection and interdiction of narcotics at Miami International Airport. A11. Wolfe said that she observes passengers several days a week

and daily observes from several hundred to several thousand passengers on any given day. A11. Wolfe testified that Miami is a major source city for narcotics, in particular, cocaine and marijuana. A11-A12. Basically narcotics are transported in "body carrys," in luggage or in freight packs. A13.

Detective Wolfe testified that on August 9, 1979, she was on duty about 5:20 o'clock p.m. with Detective Everette Titus when she first observed the Defendant. A14. Wolfe said that the detectives' attention was first drawn to the co-defendants, a man named Evans, and a woman named Raymond. A15-A16. Wolfe said the Defendant *in particular* stood apart as if she was not with Evans or Raymond. A38. Wolfe also indicated that Evans and Raymond seemed to try to act as if they were not together at certain points. *See*, A38. Wolfe said that she observed Evans cut in front of a line of fifteen to twenty people at the National Airlines counter, by climbing over the rope separating the line from the counter. A15-A16. Evans thereupon spoke with Raymond briefly, who had walked over to Evans and told her to wait in another line. A17. As Evans paid for apparently *only* one ticket voucher with four (4) or five (5) hundred ($100) dollar bills from a large roll of cash, he indicated to Raymond who was in another line, to go ahead to the terminal. A16-A17; A40; A41. Evans had requested a flight to Los Angeles. A17. Neither Raymond, Evans nor the Defendant had any luggage. A17-A18. Evans and Raymond were each carrying a small tote bag. A17.

Detective Wolfe said that after Raymond left the line Raymond met with the Defendant who was carrying

a small child one and one half (1½) to two (2) years old, who was described in the testimony below as a "toddler." A18; *see* A50. Up to this point the detectives did not think that the Defendant was together with Evans and Raymond. A38-A39. Detective Wolfe emphasized in her testimony that the defendants had no luggage for their trip to Los Angeles. *See,* A18; A17. Wolfe testified that although Evans "caught up with" the two women, Raymond and the Defendant, when Detective Titus approached Evans after they passed the security checkpoint (*see,* A19), the women continued walking ahead (*see,* A18; A19). Wolfe said that the women looked back quickly and saw Detective Titus speaking with Evans; looked quickly at each other and *then began walking more quickly down the concourse.* A19.

At this point, Detective Wolfe went over to Raymond and the Defendant and introduced herself as Detective Wolfe, a police officer and asked if they had any objection; could she speak with them for a moment. A20; A22. Detective Wolfe explained why she identifies herself as a police officer, thus:

> "A [Continuing] It's been my experience that people who are sometimes carrying narcotics *are afraid of a ripoff from some other source* and would be more likely to be afraid of some stranger walking up to them *and, maybe, react violently.*" [Emphasis added].
>
> A20.

Detective Wolfe said that in response to her inquiry, Raymond said "sure" and the Defendant nodded in the affirmative. A43. Wolfe asked if they would mind showing

her some identification and subsequently the Defendant said her name was Harrison. A22. Raymond was fumbling around for identification, but did not produce any identification. A22; A25. Detective Wolfe and the women were about fifteen feet ahead of Detective Titus and Evans and about twenty-five (25) to thirty (30) feet from the checkpoint at this point in the transaction. A22-A23. The two women had their backs to Evans and Detective Titus. A23. Detective Wolfe said that both women were extremely nervous, which Wolfe found unusual, because normal airline passengers in her experience are not nervous at conversing with a police officer and in particular, herself. A23; *see* A45. Thereupon Detective Wolfe asked both women if she could look through their belongings and explained to them that they did not have to let her examine their belongings. A24. Both women stated that they had no objection. A24. Wolfe testified that in the totebag Raymond was carrying, she found three (3) one-way tickets dated August 4, 1979, (five days earlier), for trips from Los Angeles to Miami. A25; *see*, A24-A25. The tickets were made out to "Mr. and Mrs. Caan" and "Mr. Jones." *See*, A24-A25. Also in Raymond's bag were an identification with Raymond's correct name; three used first class passes and one or two marijuana cigarettes. A24; A25, *see*, A47-A48. The Defendant thereupon told Detective Wolfe that she was from Miami, but was going to Los Angeles for a few days and Raymond said that she was living in Los Angeles and was going home. A25-A26. Raymond said that they had no luggage. A26.

At this juncture, the Defendant, Harrison, was holding the infant child in front of her. A26. The infant was dressed in a two piece outfit consisting of slacks

and a smock top. A26-A27. At this point, Evans and Detective Titus came up and they began to continue walking down the concourse. A25; A27. Detective Wolfe learned that Evans had purchased a single ticket voucher for "Mr. and Mrs. Kahn" and "Mrs. Johnson." A27. Evans had told Detective Titus that his name was "Mr. Kahn," but then he had no identification, but then Evans changed his story again and said that his name was "Oswald." A27. Detective Titus observed that Evan's Totebag had the name "Harrison" on it. A28. At this point in the hearing Detective Wolfe testified, thus:

> "[By Detective Wolfe]: A. The inconsistencies, the use — the inconsistencies and the story that was given by Evans coupled with the use of alias names for this trip to Los Angeles coupled with such a small amount of luggage for a party of three with a baby travelling across country one way, suggested to me the possibility that there was a violation of narcotics laws going on; that, perhaps, these people were smuggling narcotics."
>
> A28.

When the parties arrived at the terminal gate, Evans gave the tickets to Raymond and told her to go get the boarding passes. A29. Detective Wolfe said that she observed "Kahn" on the new ticket voucher rather than "Caan," and the new ticket indicated "Johnson" rather than "Jones," which were the names on the August 4, 1979 ticket stubs, that Detective Wolfe had seen in Raymond's purse. A29; *see*, A24-A25. Wolfe

specifically testified that both women were wearing tight-fitting clothing and that therefore they were not body-carrying narcotics. A46-A47. However, Wolfe said that the potpourri of names further confirmed her belief in the defendant's overt efforts to conceal their activities, using an alias. A28; *see*, A50.

Detective Wolfe testified that as she walked down the concourse toward the gate after speaking with the women, she became suspicious of the conspicuous bulge in the area of the infant's abdomen. A29. Wolfe said that the child's midriff was exposed (*see*, A29) and that the child's diaper bulged out two to three times as much on the abdomen, which was partially exposed, as the child's rear. A29. Wolfe said that the bulge was not consistent in any respect with her experience in the normal diapering of an infant and that the bulge protruded out as much as two inches from the child's body. A29-A30; *see*, A52. Detective Wolfe testified that in her experience, she had seen on six (6), previous occasions the efforts of a narcotics courier to transport narcotics in such a manner in a child's diaper. A30. Wolfe also testified that on forty (40) previous occasions she has observed body-carrys of narcotics and that the bulge on the child was entirely consistent with a belief that the Defendant was attempting to transport narcotics in her child's diaper. A30-A31. Detective Wolfe said that she believed that in her experience the substance in the bulge in the child's diaper was cocaine and she became concerned for the safety and welfare of the child. A32. Wolfe explained that if the cocaine was in contact with the child's skin or the mucous membranes of the child's vagina, it could be quite dangerous or even fatal to the child. A32; A54. Wolfe said that even experienced

investigators avoid direct contact with their skin on seized narcotics, because they never know what's in it, even aside from the possible dangers of irritation or adsorption of the stuff. *See*, A55. She said that she has had experience in several cases, where a courier incurred a rupture of a container of narcotics in a body orifice and was dead before he reached the hospital. A57. Detective Wolfe emphasized that in her experience any amount of adsorption in such a small child could be "quite dangerous" or even fatal. *See*, A32; A57. When the parties arrived at the departure area Detective Wolfe asked the Defendant to put the child down and Detective Wolfe thereupon felt the bulge in the child's diaper and determined that it was a powdery and granular substance, which she believed was cocaine. A31; A55. At that point she arrested the Defendant and determined that a "pamper" type diaper was between the bag of cocaine and the child's skin. A33-A34. Wolfe testified that she decided not to disturb the bag of cocaine by opening it quickly. A34. Evans and Raymond were also arrested for conspiracy. A33-A34. The bag of cocaine was sent to the laboratory for analysis and was one hundred and forty (140) grams of cocaine. *See*, A35-A36. Detective Wolfe testified that she was never discourteous to the Defendant; she never attempted to conceal her identity; she never threatened or demanded anything and the Defendant was coherent, cooperative and understood everything at all times during the transaction. A35-A36. The Defendant presented no evidence or exhibits whatsoever and then rested her case. *See*, A6; A62.

Upon the Motion to Suppress defense counsel 1) argued that under *State v. Frost*, 374 So.2d 593 (Fla. 3d DCA 1979) (Schwartz, J.) and this Court's decision in

Brown v. Texas, 433 U.S. 47 (1979), *that the mere approach of Detective Wolfe for conversation was detention;* 2) *that there was no probable cause for the search;* and 3) *that Officer Wolfe needed permission to search the baby's diaper. See,* A62-A67. The prosecutor argued 1) that the initial transaction was a mere contact – the Defendant was free to go; 2) that the bulge and profile provided articulable suspicion; 3) that the officers acquire probable cause to believe a felony was being committed and it was reasonable therefore to search the child's diaper and 4) that suppression would only serve to frustrate good faith law enforcement. *See,* A68-A70. The trial court denied the Motion to Suppress finding, that the initial discussion was lawful and that there was probable cause for the search. A71-A71.

On appeal to the Florida Third District Court of Appeal, the Defendant again argued, 1) *that the mere identification of a police officer is a constitutional detention and the officers had no right to even approach the Defendant without articulable suspicion;* 2) *that the officers had no articulable suspicion;* 3) *that the search of the child was without probable cause and* 4) *that even if the bulge on the child was narcotics, the officers couldn't search it unless they thought it was a weapon.* The State argued vigorously 1) that the evidence below was undisputed; 2) that based upon *United States v. Mendenhall*, _ U.S. _, 100 S.Ct. 1870 (1980), *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973) and *Terry v. Ohio*, 392 U.S. 1 (1969) that the initial transaction was not a constituitonal "stop" but a mere "contact" between an officer in a position, which she had a right to be in and citizen on a public concourse; 2) that based upon *Brown v. Texas*, 433 U.S. 47 (1979), *United States v. Brignoni-*

Ponce, 422 U.S. 873 (1975) and *Draper v. United States*, 358 U.S. 307 (1959), Officer Wolfe developed both articulable suspicion and then probable cause to believe that a felony was being committed in her presence; 3) that the actions of the officers were clearly undertaken in good faith based upon the circumstances as presented to them and suppression would serve only to frustrate the State's good faith efforts to stem the tide of chronic narcotics traffic in Florida.

The Florida Third District Court of Appeal rejected the State's arguments and agreed with the Defendant basing its reversal upon this Court's opinions in *United States v. Mendenhall*, and *Reid v. Georgia*. *See*, *Royer v. State*, 389 So.2d 1007 (Fla. 1980) *reversed en banc* (Schwartz, J.). The court in *Royer* has held that *Mendenhall* is *contrary* to *Reid* and that all so-called "profile" transactions are illegal under *Reid*, no matter what the observed facts are. 389 So.2d at 1017, n.6 and 1019-1020. The Florida District Court's opinion states only in a summary fashion thus:

> "PER CURIAM.
>
> "The conviction under review will be reversed because the trial court erred in denying the motion to suppress the contraband. See: Royer v. State, 389 So.2d 1007 (Fla. 3d DCA 1980), United States v. Mendenhall, _ U.S. _, 100 S.Ct. 1870, 64 L.Ed.497 (1980); Reid v. Georgia, _ U.S. _, 100 S. Ct. 2752, _ L.Ed.2d _ (1980), Case No. 79-448, opinion filed June 30, 1980.

Reversed and remanded for further proceedings not inconsistent herewith."

A72-A73.

A member of the Florida District Court panel specially found that there was a search without probable cause because there was no weapon:

"HUBBART, Judge (concurring)

"I concur in the court's reversal in this cause solely on the ground that there was no reasonable basis on this record for the police to have conducted a full blown search of the defendant — even assuming, as the state contends, that the police either effected no prior temporary stop of the defendant at the airport or did so based on founded suspicion. As such, the search here was unreasonable and its fruits should have been suppressed by the trial court upon the defendant's timely motion. *Sibron v. New York*, 392 U.S. 40, 88 S.Ct. 1889, 20 L.Ed.2d 917 (1968)." [Citations omitted].

The State filed an extensive Petition for Rehearing, which was summarily denied. A74-A83.

V.

SUMMARY OF ARGUMENT

The decision of the Florida District Court, relying upon this Court's decisions in *United States v. Mendenhall*,

_ U.S. _, 100 S.Ct. 1870 (1980) and *Reid v. Georgia*, _ U.S. _, 100 S.Ct. 2752 (1980) and directly construing the Fourth Amendment, is a misapplication of the Fourth Amendment and this Court's decisions in *Reid* and *Mendenhall* and is in direct and substantial conflict with the rule of this Court in *Mendenhall*, *Schneckloth v. Bustamonte*, and *Terry v. Ohio*. In view of this Court's recent decisions, in *Mendenhall* and *Reid* leaving the present issues in a state of some confusion, this Honorable Court should correct the misapplication of *Reid* and *Mendenhall* herein. The exclusionary rule should not be applied in the circumstances of the case at bar, where the officers acted in good faith. *See, United States v. Williams*, 622 F.2d 80 (5th Cir. 1980), *en banc*.

VI.

ARGUMENT

The decision of the Florida Courts cannot be reconciled with the decisions of this Court in *United States v. Mendenhall*, ___ U.S. ___, 100 S.Ct. 1870 (1980); *Terry v. Ohio*, 392 U.S. 1 (1978); *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973); and *Adams v. Williams*, 407 U.S. 143 (1972). The State submits first of all, that in the circumstances of the case at bar, the initial transaction herein was not prohibited by the Fourth and Fourteenth Amendments but was a mere "contact" between a police officer in a position that he had a right to be in and citizen on the street. *Terry v. Ohio; United States v. Mendenhall; Schneckloth v. Bustamonte. Secondly*, under *Brown v. Texas*, 4430 U.S. 47 (1979), *Draper v. United States*, 358 U.S. 307 (1959) and *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975) the officers

clearly developed both articulable suspicion and eventual probable cause to believe that a felony was being committed in their presence. The officers had a duty to act upon the obvious circumstances in their experience and would have been derelict in their duties had they not done so. *See, Adams v. Williams*, 407 U.S. at 145-146; *United States v. Elmore*, 595 F.2d 1036 at 1039-1040 (5th Cir. 1979). In the opinion cited by the District Court in *Royer v. State*, 389 So.2d 1007 (Fla. 3d DCA 1980) (*reversing reported panel opinion en banc*), the Florida Third District Court of Appeal has rejected the mandate of *Terry, Mendenhall, Schneckloth, Brown, Draper*, and *Adams v. Williams*, in the airport context, in favor of what it erroneously perceives as the ruling of this Court in *Reid v. Georgia*, __ U.S. __, 100 S.Ct. 2752 (1980). The District Court gives force of law a previous "attraction" to the concept that *any* approach by a police officer is a "stop." *See, State v. Frost*, 374 So.2d at 597-598 (Fla. 3d DCA 1979); *Royer*, 389 So.2d at 1019. Under the guise of *Royer* and *Reid* the Florida Third District Court of Appeals has embarked upon a course (*in addition to that in the case at bar*), of wholesale reversals of Florida trial court findings of consent and articulable suspicion in the airport context. *See, Correa v. State*, 389 So.2d 1204 (Fla. 3d DCA 1980) (*reversed upon rehearing subsequent to Royer assuming that the mere approach of a police officer is a "show of authority"*); Stuart v. State, 389 So.2d 4 (Fla. 3d DCA 1980) (*reversed see Royer* and *Frost*); Major v. State, 389 S.2d 1203 (Fla. 3d DCA 1980) (Schwartz, J.) (*reversed on rehearing after Royer even though the Defendant signed a written consent from and was advised of a right to refuse consent*); *Monohan v. State*, 390 So.2d 756 (Fla. 3d DCA 1980) (*assuming after Royer that the approach of narcotics*

officers in a airport is a "stop" per se); *Cimino v. State*, 390 So.2d 795 (Fla. 3d DCA 1980) (*'reversed see Reid and Royer'*). The State has brought three separate petitions before this Court, in *Florida v. Rodriguez;* U.S.Sup.Ct. Case No. 80-1158; *Florida v. Stuart*, U.S.Sup.Ct. Case No. 80-1319 and the present case, which each demonstrate the misapplication of *Reid* and *Mendenhall* and the failure of the Florida District Court to properly apply the prohibitions of the Fourth Amendment. As in the case at bar, the Florida Third District controls the substantive law in airport cases, located as it is, in Miami, Florida, the nation's most chronic drug courier terminal.[1] Furthermore, as in the case at bar, where the State has no other avenue for review, this Honorable Court should take jurisdiction and overturn the Third District Court of Appeal.

In the case at bar, there is no testimony, but that the officers merely approached and contacted a citizen on the street. Under *Terry v. Ohio, supra*, and its

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[1]Just during the eighteen (18) months period from October 1, 1977, through May 31, 1979, the Miami International Airport unit *identified* three hundred and eighty-six (386) narcotics couriers and seized thirty (30) pounds of quaaludes; four hundred and thirty (430) pounds of cocaine and fifteen thousand (15,000) *pounds* of marijuana *just* being transported through Miami International Airport in suitcases, briefcases, and in bodycarrys. A . During an eight (8) month period preceding May 31, 1979, the Airport Narcotics Unit also seized twenty-four (24) pounds of heroin. Seizures of cocaine and marijuana in South Florida set national records for frequency and quantity. These figures are significantly larger than the seizures before this Court in *Mendenhall. See, United States v. Mendenhall*, 596 F.2d 706, at 708, n.1 (6th Cir. 1979), Weick, J. Dissenting.

progeny, a police officer may approach a citizen for three separate reasons: 1) arrest; 2) stop and investigation and 3) mere contact. *See, e.g., United States v. Wylie,* 569 F.2d 62 (D.C. Cir. 1977); *Carpenter v. Sigler,* 419 F.2d 169 (8th Cir. 1969); *Wilson v. Porter,* 361 F.2d 412 (9th Cir. 1966); *see also, United States v. Mendenhall.* The predicate for each of these categories is different; as are the consequences. In order to justify an arrest, there must exist probable cause to believe that a crime has been committed and that the defendant committed it. In order to justify a *stop and detention,* the police must be able to articulate an objective, reasonable bases for belief that a crime has been will be, or is currently being committed. *Terry v. Ohio, supra.* Such a stop gives the police the power to detain a citizen against his will for the limited purpose of investigation. The third form of approach, a mere *contact* consists of simple common sense. *See, Terry v. Ohio; United States v. Mendenhall; United States v. Wylie.* In a mere *contact* the officer may not detain a citizen at all. He has only a common right to engage in voluntary conversation and if the citizen does not wish to respond, he need not, and may simply walk away. *See, e.g., United States v. Wylie,* at 67. This natural, common sense conclusion is predicated upon the fact that ordinary threshold discourse between police officers and citizens on the street is not cause for constitutional alarm. *Terry v. Ohio, United States v. Mendenhall.*

In *Terry v. Ohio,* the court, through Justice Warren, stated the applicable standards herein thus:

> "It does not follow that because an officer may lawfully arrest a person only when he is apprised

> of facts sufficient to warrant a belief that the person has committed or is committing a crime, the officer is equally unjustified, absent that kind of evidence, in making any intrusion short of arrest."
>
> *Id.* at 26.

The court in *Terry* recognized that for the purpose of the Fourth Amendment, an "arrest and search" and a "stop" are to be considered "seizures." However, the court recognized that:

> "[N]ot all personal intercourse between policemen and citizens involves "seizures" of persons. Only when the Officer, by means of physical force or show of authority has in some way restrained the liberty of a citizen may we conclude that a "seizure" has occurred."
>
> *Id.* at 19, n.16.

Mr. Justice Harlan in his concurring opinion specifically recognized that the right of a police officer to address questions to other persons is a right possessed by every citizen, co-existing with the *equal* right of the person addressed to ignore his interrogator and walk away. 392 U.S., *supra*, at 32, 33. Further, in the concurring opinion of Mr. Justice White, it is stated:

> "There is nothing in the Constitution which prevents a policeman from addressing questions to anyone on the streets."

More recently in *United States v. Mendenhall*, the court recites preliminary facts virtually identical to those herein as *not tantamount to a seizure:*

> *"We adhere to the view that a person is "siezed" only when by means of physical force of a show of authority, his freedom of movement is restrained. Only when such restraint is imposed is there any foundation whatever for involving constitutional safeguards.* The purpose of the Fourth Amendment is not to eliminate all contact between the police and the citizenry, but "to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals." *United States v. Martinez-Fuerte*, 428 U.S. 543, 554, 96 S.Ct. 3074, 3081, 49 L.Ed.2d 1116.
>
> "On the facts of this case, no "seizure" of the respondent occurred. [1] The events took place in the public concourse. [2] The agents wore no uniforms and displayed no weapons. [3] They did not summon the respondent to their presence, [4] but instead approached her and identified themselves as federal agents. [5] They requested, but did not demand to see the respondent's identification and ticket. *Such conduct without more, did not amount to an intrusion upon any constitutionally protected interest. The respondent was not seized simply by reason of the fact that the agents approached her, asked her if she would show them her ticket, and identification, and posed to her a few questions. Nor was it enough to establish*

a seizure that the person asking the questions was a law enforcement official. See *Terry v. Ohio, supra,* 392 U.S., at 31, 32-33, 88 S.Ct., at 1885-1885 (Harlan, J., concurring). See also A.L.I., Model Code of Pre-Arraignment Procedure §110.1(1) and commentary at 257-261. In short, nothing in the record suggests that the respondent had any objective reason to believe that she was not free to end the conversation in the concourse and proceed on her way, and for that reason we conclude that the agent's initial approach to her was not a seizure.

"*Our conclusion that no seizure occurred is not affected by the fact that the respondent was not expressly told by the agents that she was free to decline to cooperate with their inquiry, for the voluntariness of her responses do not depend upon her having been so informed.* See *Schneckloth v. Bustamonte,* 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854. *We also reject the argument that the only inference to be drawn from the fact that the respondent acted in a manner so contrary to her self-interest is that she was compelled to answer the agent's questions.* It may happen that a person makes statements to law enforcement officials that he later regrets, but the issue in such cases is not whether the statement was self-protective, but rather whether it was made voluntarily.

"*The Court's decision last Term in Brown v. Texas,* 443 U.S. 47, 99 S.Ct. 2637, 61 L.Ed.2d 357, *on which the respondent relies, is not*

apposite. It could not have been plainer under the circumstances there presented that Brown was forcibly detained by the officers. *In that case, two police officers approached Brown in an alley, and asked him to identify himself and to explain his reason for being there. Brown "refused to identify himself and angrily asserted that the officers had no right to stop him." Id.,* at 49, 99 S.Ct., at 2639. *UP TO THIS POINT THERE WAS NO SEIZURE.* But after continuing to protest, the officer's power to interrogate him, Brown was first frisked, and then arrested for violation of a state statute making it a criminal offense for a person to refuse to give his name and address to an officer 'who has lawfully stopped him and requested the information.' " [Emphasis added].

100 S.Ct. at 1877-1878.

In the case at bar, consistent with the mandate of *Terry v. Ohio, Schneckloth v. Bustamonte,* and *United States v. Mendenhall,* the trial court affirmatively found that the Defendant had voluntarily consented both to speak with and to provide Officer Wolfe with identification. These circumstances do *not* amount to a "stop" within the meaning of the United States Constitution. *Terry v. Ohio; United States v. Mendenhall; see also, United States v. Fry,* 622 F.2d 1218 (5th Cir. 1980); *United States v. Elmore,* 595 F.2d 1036 (5th Cir. 1979).

For reversal, the Defendant relied heavily in the Florida District Court upon the analysis in *State v. Frost, supra.* In *Frost,* in a *state appeal,* the court *held*

that because it was a state appeal, and the appellate record *failed to show* that the Appellant's license and airline ticket were *immediately* returned to the Appellant, the Court would *assume* that ticket and license were *not* immediately returned.[2] *See*, 374 So.2d at 595-596 at 598. The *Frost* court concluded that therefore *automatically*, a "stop" had been effected by the Officer, despite the evidence to the contrary. *See*, 374 So.2d at 598; *contra*, *United States v. Elmore*, 595 F.2d 1036 (5th Cir. 1979) (*the momentary possession of the defendant's ticket is not a "stop"; the officers acquired articulable suspicion through the defendant's false identification prior to walking away the defendant's ticket*). The *Frost* court in its *holding*, further *severely* critized the United States Fifth Circuit Court of Appeals in *Elmore*, for what the *Frost* court viewed, as holding, "*that it makes a constitutional difference as to the restraint on one's liberty whether an officer with a traveler's ticket in his hand remains face to face with the individual or walks away from him,*" and holding, "*that the fruits of an unlawful search or seizure* [*can*] *retroactively serve to sustain it.*" *See*, 374 So.2d at 598, n.4. The *Elmore* court, did neither of these things, but rather, approved the right of a police officer to approach anyone on the street and engage him in a voluntary conversation. *Accord*, e.g., *Terry v. Ohio* and *Mendenhall*.

Apart from the apparent holding in *Frost* above and *central* to the *Frost* court's complaint about *Elmore*

---

[2]This issue was neither presented nor argued by anyone in the trial court.

and the present analysis, is the discussion in *Frost*, wherein the *Frost* court opined that:

> "In applying these standard to airport searches like the one involved in this case, many courts have held that a Fourth Amendment stop occurs as soon as officers initially approach an individual, identify themselves, and begin to question him. [Citing] *United States v. Coleman*, 450 F.Supp. 433, 439 (E.D.Mich. 1978):
>
> *Id.* at 597.

In *Royer v. State*, the reported panel opinion *rejected* the *Frost* analysis above, 389 So.2d at 1011-1012, and adopted a view that observed facts, which happen to fit a "profile" were sufficient to provide articulable suspicion and/or eventual probable cause. 389 So.2d at 1014. *In Royer the facts were identical to those in Mendenhall:*

> "The facts leading up to the search and seizure of the marijuana were the following. Officers Johnson and Magdalena, of the Dade County Safety Department, were plainclothes detectives assigned to the County's Crime Bureau, Narcotics Investigation Section, performing duty at Miami International Airport as members of what was known as the Smuggling Detail, consisting of a sergeant and eitht officers, who worked in pairs, on shifts. Said officers had acquired knowledge of a "profile" by which it was possible with a substantial measure of certainty to recognize couriers or carriers of drugs in air travel. Such profile had been arrived

at by experiences of narcotics officers with a great number of such persons in main drug distribution centers and the target city destination places.

Miami was a known point from which imported drugs, including marijuana, were transported to other target destination cities, one of which was New York City. It was known that commercial airlines were used for such transport of drugs by such couriers and others. On a certain day, at the Miami International Airport, the above-named officers observed the defendant as he was about to purchase a ticket on an airline. The defendant's appearance and mannerisms, his luggage and the way he dealt with it, and his means of obtaining his ticket, etc., as observed by the officers were such as to fit the profile, the details and nature of which we purposely do not here state. As disclosed through the testimony of Officer Johnson, the defendant was observed to fit the profile of a drug courier.

The defendant checked his two suitcases, placing identification labels thereon bearing the name "Holt," but without stating his address or telephone number in the spaces provided therefore on the labels. The officers noted the name which the defendant placed on the suitcases.

As the defendant was proceeding to enter the concourse leading to the boarding area, after

having obtained his ticket and checked his suitcases, the officers approached him, identified themselves as police officers, and asked him if he had time to talk with them, which he said he did. There followed a series of requests by the officers, to none of which the defendant objected, and to each of which the defendant assented. Those consisted of his initial consent to talk to the officers, his production upon request of his ticket (which was to New York City), and his driver's license for identification (which driver's license for identification (which showed his name to be Mark Royer, not Holt which was the name on the ticket); his consent to move with them out of the main room into a vacant side room for further conversation; his consent to the officer's request that the suitcases be opened (after Johnson had retrieved the suitcases). When the officers requested his consent to the opening of the suitcases, the defendant produced a key from his pocket and unlocked one of the cases. He explained that he did not know the combination of combination lock on the other suitcase, and upon request gave his consent to the opening of the other case by the officers, which they did with the aid of a screwdriver. The search revealed the suitcases contained 65 pounds of marijuana."

389 So.2d at 1008-1009.

The panel opinion affirmed the concept of a mere contact and consent, opining that:

> "Here there was no coercive action by the officers. There was no use of force. They did not touch him, or display any weapon, or make any demands. There was no show of force other than the fact, as revealed to the defendant, that Johnson and Magdalena were police officers. The statement to the defendant by one of the officers, when requesting his consent to the opening of the suitcases, that they had reason to believe the cases contained drugs or contraband was not a threat, but rather an explanation of why they were requesting consent to search the cases. The requests which the officers made of the defendant were made politely, and the defendant so testified."
>
> *Id.* at 1010.

Upon rehearing, the *dissent* to the panel opinion *authored* the *en banc* reversal of both the previous panel and the trial court, holding that under *Frost, supra,* the defendant was *"arrested"* when he consented to go to the *"interrogation room."* 389 So.2d 1018-1019. Mirroring its previous dissenting opinion, the *en banc* opinion refers to the factual finding of consent by the trial court as, *"THE ALLEGED CONSENT." Id.* at 1019. The new opinion also rejects the fact that the defendant gave an alias to the airlines as *inconsequential* and further *ridicules* the narcotics officer's observations as *"amateur psychiatry"* that should be *"completely disregarded." Id.*, at 1016-1017; 1017, n.4. *The District*

Court, per Schwartz, J., then concluded that under Reid v. Georgia, all so called "profile" stops were illegal irrespective of what the observed facts are, and noted that Mendenhall is "contra." 389 So.2d at 1019, and 1017 n.6. Important to the present analysis, *the Royer court also refused to dispell or disapprove of the dicta in Frost that a constitutional "stop" occurs as soon as a policeman identifies himself to a citizen on the street. Id.*, at 1018 n.8.

The *Frost* court had noted that it was "attracted" by the line of reasoning in *Coleman.* In the case at bar, and in decisions subsequent to the *Royer en banc* reversal above, the Florida District Court has given the "attraction" in *Frost,* force of law. *See, Monohan v. State,* 390 So.2d at 757; *Correa v. State,* 389 So.2d 1205; *Cimino v. State, supra; Major v. State,* 389 So.2d at 1204. In *Monohan, Correa* and *Major* the Florida Third District Court assumes a constitutional "stop" and/or couches its analysis in terms of a *constitutional "submission to apparent authority,"* where all that has occurred (*as in the case at bar*), is identification by the plain clothes narcotics officers and their asking if the courier has a moment to talk and/or asking for consent.

The State of Florida in the case at bar and in the decisions above and those that it has brought to this Court, is, faced with a judicial impasse in the Third District Court of Appeal, the seat of the nation's most chronic drug traffic. It is plainly evident in the case at bar, that *contrary* to *Terry v. Ohio; Schneckloth v. Bustamonte* and *United States v. Mendenhall,* the Florida District Court has departed from any correct constitutional analysis under the guise of this court's views in *Reid v. Georgia.*

The utter confusion in the *Royer* as to this Court's opinions in *Reid and Mendenhall*, is causing substantial disruption and confusion in the State's prosecution efforts. The failure of the Florida District Court to properly apply this Court's recent decisions in the *Reid and Mendenhall* is emblematic of its failure to properly apply *Terry v. Ohio*, in the airport context. At each carefully defined step, from initial observation to investigation and arrest, the officers' conduct was completely in compliance with the applicable legal requirements. *See, Adams v. Williams; United States v. Vasquez-Santiago*, 601 F.2d 1069 (2d Cir. 1979); *see also, United States v. Price*, 599 F.2d 494, 500 (2d Cir. 1979); *United States v. Garcia*, 450 F.Supp. 1020 (E.D.N.Y. 1978). In *Adams v. Williams*, 407 U.S. 143 (1972), this Court explained:

> "The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape. On the contrary, Terry recognizes that it may be the essence of good police work to adopt an intermediate response. *See id.*, at 23, 88 S.Ct., at 1881. A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time. [citations ommitted]".
>
> *Id.*, at 145-146.

In the case at bar, the eventual arrest of the Appellant *was not a random circumstance.* Detective Wolfe testified as to her extensive training a experience in detecting narcotics couriers. She testified that Miami is a major source city for narcotics and in particular, cocaine and marijuana. Based upon her experience, she observed and learned 1) that the codefendants and the Defendant were acting as they were not together; 2) Evans paid for the ticket voucher with four or five hundred dollar bills from a large roll of hundred dollar bills; 3) the women walked more quickly with visible alarm at the approach of Detective Titus to speak with Evans; 4) the women were unusually nervous at the conversation with Detective Wolfe; 5) the Defendant and the codefendants had no luggage even though the Defendant was allegedly going to California with a small child and the codefendant had been in Miami at least five (5) days; 6) the Defendant and the codefendants were all travelling under an alias and had travelled to Miami under aliases and Evans overtly falsified his name giving yet another alias; 7) in Detective Wolfe's experience, the women's story was inconsistent and their answers to simple questions were evasive; 8) the bulge in the child's diaper was inconsistent with the clothing and body of the female child and not consistent with normal diapering of an infant; but instead was entirely consistent with body-carry's of narcotics; Detective Wolfe, in her experience has observed on six (6) other infants and narcotics bulges that she has observed on forty (40) previous occasions. The State submits that based upon her experience and training, and her actual observation of the instant fact situation, Detective Wolfe was absolutely reasonable, prudent and correct in her conclusion based upon her specialized training and

experience and observations, that the Defendant was transporting narcotics in the infant's diaper. Any other conclusion upon these facts is *"unreasonable" and constitutes a manifest refusal to give any credence to Adams v. Williams, Terry v. Ohio,* and *United States v. Mendenhall.* Under *Adams v. Williams,* it would have been negligent of Officer Wolfe to simply shrug her shoulders and let this criminal transaction go unheeded. The State submits that it is manifestly erroneous to suggest that the present observed facts did not amount to articulable suspicion and probable cause in the training and experience of Detective Wolfe. *See, Delaware v. Prouse,* _____ U.S. _____, 99 S.Ct. 1391 at 1396 (1979).

The Florida District Court, in applying the Fourth Amendment to the airport context herein, has failed utterly to apply the balancing test under the Fourth Amendment explained and exemplified in *Mendenhall. See also, United States v. Williams,* 622 F.2d 80 (5th Cir. 1980), *en banc.* The District Court herein and in the decisions noted above has created a rule of law under the Fourth Amendment where all any experienced courier need do in Florida, is to reveal all and then complain that he only acted pursuant to a subjective implied coercion. This Court rejected such analysis in *Schneckloth,* thus:

> *"It is not unreasonable for officers to seek interviews with suspects or witnesses or to call upon them at their homes for such purposes. Such inquiries, although courteously made and not accompanied with any assertion of a right enter or search or secure answers, would permit the criminal to defeat his prosecution by*

voluntarily revealing all of the evidence against him and then contending that he acted only in response to an implied assertion of unlawful authority. [Quoting *People v. Michael*, 45 Cal.2d at 754, 290 P.2d, at 854, Traynor, J.]' [Emphasis added].

412 U.S. at 230.

Accord, United States v. Gorman, 355 F.2d 151 at 158-159 (2d Cir. 1965). The Florida District Court under the guise of this Court's opinions in *Reid* and *Mendenhall*, contrary to the advise of *Schneckloth* has permitted drug couriers to avoid prosecution by a bare claim of a response to an implied assertion of authority, where the only evidence was that the transaction was entirely voluntary. The Florida District Court has at the same time employed an extraordinary and strained analysis for probable cause and articulable suspicion, *far exceeding any requirement of reasonableness under the United States Constitution*, to defeat the State's good faith efforts at law enforcement. *See, Dunaway v. New York*, ___ *U.S.* ___, 99 S.Ct. 2248 at 2260 (1979), (Mr. Justice White concurring).

In the present case, the immediate safety of the child must prevail to warrant an immediate examination of the bulge. *See also, Draper v. United States*, 358 U.S. 307, 79 S.Ct. 329, 3 L.Ed.2d 327 (1959). The absolute failure of the Florida District Court to apply any balancing test under the Fourth Amendment is a misapplication of the constitution and *Reid* and *Mendenhall*. In the nation's most chronic narcotics courier terminal, the Florida Third District Court is Florida's leading court upon the present issues and now under the guise of this Court's opinions in *Reid* and *Mendenhall* sits as a

judicial roadblock to the State's lawful prosecution efforts. To deny that these Detectives had reasonable belief that it was more likely than not, that the Defendant was transporting narcotics upon the facts known to them in the case at bar, is to deny the validity of their extensive training and experience, contrary to the cited opinions of this Court. Under the guise of this Court's views in *Reid* and *Mendenhall*, the Florida Third District Court has relegated the State investigations and probable cause, where it had a reliable informant; a narcotics dog or the narcotics fall into plain view. This Court must act to correct this grievous constitutional error.

In the case at bar, the detectives simply responded in good faith to the obvious circumstances, which they observed as trained narcotics investigators. The detectives also responded in good faith to the overt manifestations of consent of the Defendant. The application of the exclusionary rule to the good faith actions of these detectives is nonsensical and contrary to any intended purpose under the United States Constitution. *See, United States v. Williams, supra; see also, Stone v. Powell*, 428 U.S. 465, 496-516 (1976) (Burger J. concurring). Where the exclusionary rule has served its purpose it should not be extended now such that all it serves to do is to frustrate the lawful interdiction of narcotics traffic by excluding unimpeachable evidence. *See, Stone v. Powell; Williams, supra.*

VII.

CONCLUSION

The Petitioner submits that there is a substantial federal question herein in the airport context regarding

the construction of this Court's opinions in *Mendenhall, Reid, Terry v. Ohio, Adams v. Williams,* and *Schneckloth v. Bustamonte.* The utter confusion in the opinion in *Royer* as to this Court's opinions in *Reid* and *Mendenhall,* is causing substantial disruption and confusion in the State's prosecution efforts in South Florida, *the nation's most chronic drug courier terminal.* In the case at bar and in two companion cases in this Court, *Florida v. Rodriguez, Florida v. Stuart,* and cases like these, the State has no other source of review except in this Court. The failure of the Florida Courts to even consider a balancing test, is patently erroneously under the United States Constitution. The officers herein responded in good faith and therefore the cocaine should *not* have been suppressed where its suppression only serves to frustrate the lawful interdiction of chronic narcotics traffic. *See, United States v. Williams, supra.* Illicit narcotics traffic is insidious cancer eating at the very fabric of our society. It is clear that narcotics traffic presents a clear and present danger to the underlying fabric of this nation. The "Serbonian Bog" of the exclusionary rule should not be extended to the present circumstances. *Cf., complaint in, United States v. Andrews,* 474 F.Supp. 456 at 462 (D. Colo. 1979). In view of the circumstances of the present case and in view of *Mendenhall* and *Reid,* this Court has jurisdiction and should take jurisdiction over this matter of compelling national importance.

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80-1449

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FILED
FEB 17 1981
ALEXANDER L. STEVAS,
CLERK

NO.

in the

Supreme Court

of the

United States

October Term, 1980

THE STATE OF FLORIDA,
Petitioner,

vs.

SHEROLYN DENISE-HARRISON,
Respondent.

On Petition for a Writ of Certiorari to the District Court of Appeal of Florida, Third District

APPENDIX TO BRIEF OF PETITIONER ON JURISDICTION

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IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN
AND FOR DADE COUNTY, FLORIDA

CASE NO: 79-13082

THE STATE OF FLORIDA,

Plaintiff,

vs.

SHEROLYN HARRISON,

Defendant.

MOTION TO SUPPRESS EVIDENCE

COMES NOW the Defendant, by and through his undersigned attorney pursuant to RCrP 3.191 (h), the Fourth and Fourteenth Amendments to the United States Constitution and Article I, Section 12 of the Florida Constitution (1968) and respectfully moves this Honorable Court to suppress as evidence in this cause:

Any and all cocaine or any mixture containing cocaine as alleged in the information and which was seized from the Defendant's daughter.

GROUNDS FOR MOTION:

The evidence was illegally seized without a search warrant in violation of the Fourth and Fourteenth Amendments to the United States Constitution and Article I, Section 12 of the Florida Constitution (1978).

STATEMENT OF FACTS:

While at Miami International Airport on August 9, 1979, the Defendant was approached by Detective J. Wolfe of the Dade County Public Safety Department.

The Defendant was carrying her baby in her arms and appeared to be in the company of two other individuals.

The Defendant and the two others were approached by police officers.

A search of the Defendant's belongings revealed no contraband.

As the Defendant was walking down the concourse with Detective Wolfe, Detective Wolfe noticed a bulge in the baby's diaper.

Detective Wolfe had the Defendant put the baby down.

Detective Wolfe reached into the baby's pants and felt what she believed to be a soft bag.

Detective Wolfe had no permission from the Defendant to search the baby.

After feeling what Detective Wolfe believed to be a bag, the Defendant was placed under arrest.

Subsequent to the Defendant's arrest, a bag containing the evidence sought to be suppressed herein was removed from the baby's pants.

WHEREFORE, the Defendant respectfully requests this Honorable Court to grant this motion to suppress evidence.

Respectfully submitted,
BENNETT H. BRUMMER
Public Defender
11th Judicial Circuit of Florida
1351 Northwest 12th Street
Miami, Florida

BY: /s/ David Finger
DAVID FINGER
Assistant Public Defender

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN
AND FOR DADE COUNTY, FLORIDA

CRIMINAL DIVISION

NO. 79-13080

THE STATE OF FLORIDA,

Plaintiff,

vs

SHEROLYN D. HARRISON,

Defendant.

Metropolitan Justice Building,
Miami, Florida,
Friday, 9:00 a.m.,
September 28, 1979.

The above-entitled case came on for motion to suppress before The Honorable Richard S. Fuller, Circuit Judge, pursuant to Notice.

APPEARANCES:

JANET RENO, State Attorney, by
RENA COHAN, Assistant State Attorney,
Attorney for Plaintiff.

BENNETT H. BRUMMER, Public Defender, by
DAVID FINGER, Assistant Public Defender,
Attorney for Defendant.

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MR. FINGER: There is a motion to dismiss as well as a motion to suppress. Which would the Court prefer go first?

THE COURT: That is what we are waiting for.

MS. COHAN: Prior to proceeding on anything, the State is now filing a new information out of an abundance of caution. That is all.

THE COURT: Without looking at it, I bet you can tell what it says.

MS. COHAN: I bet we added a count.

THE COURT: Added a count of possession.

MR. FINGER: That, obviously, is going to throw the trial posture in the case in a different position, but

the motion to suppress and the factual issues as to the motion to suppress, we can go on.

The motion to dismiss as to Florida Statute 893.135, would still lie as to Count I of the information regardless of what happens on Count II.

THE COURT: Your whole motions would still lie.

MR. FINGER: I understand exactly what she is doing. I will have to arraign my client on the new charges.

We will stand mute and invoke no discovery.

THE COURT: It will be entered by the Court as not guilty to the new information. Let us go with the motion to suppress. We have witnesses waiting and we can go on the legal matters after they have been excused.

MS. COHAN: I would inquire, prior to putting on any testimony, whether this is being video taped. I have undercover officers.

THE COURT: Would your feelings be offended if you knew they were here for some other case even though you have that beautiful red dress?

MS. COHAN: I understand who is currently in trial. The problem I have is I have an undercover officer.

THE COURT: There is another trial. I am sure they are not taping it. They may be monitoring it, but my word does not mean much. I am just telling you.

MS. COHAN: I will stipulate there is no search warrant in this case; however, I will not stipulate that the defendant has standing.

We are relying on Rocha v. Illinois and a long line of cases which are currently from the Supreme Court.

The evidence ceased in this case was ceased from an infant.

THE COURT: Please, Mr. Finger, no circus routine with the communications with the —

MR. FINGER: It is incongrous.

THE COURT: Sir, we will have no joking or funny communications with the interns and other office personnel.

MR. FINGER: I apologize. It was just a reaction. It is sort of incredulous.

THE COURT: Let us react appropriately to the evidence in the case and then we will take it up.

MR. FINGER: Has Your Honor found that we do have standing?

THE COURT: I am going to hear the evidence in the case and then everybody will have what they need in the record no matter what I do.

Call your first witness.

MS. COHAN: The State calls Detective Wolfe.

THE COURT: Would somebody be good enough to give me a copy of the motion to suppress.

Thereupon:

JODY WOLFE

was called as a witness on behalf of the State in the motion to suppress and, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. COHAN:

Q State your name and occupation, please.

A My name is Jody Wolfe. I am a police officer with the Dade County Public Safety Department.

Q How long have you been so employed?

A Approximately six years.

Q Where are you currently assigned?

A I am assigned to the organized crime bureau, narcotics section.

Q On August 9, 1979, were you so assigned?

A I was assigned to the narcotics section, specifically, to the airport narcotics unit.

Q Have you received any specialized training in the field of narcotics?

A Yes. I have.

Q Will you tell us what that has been.

A Commencing with basic training in narcotics investigation at the police academy six years ago. [objection overruled]

A [Continuing] Since then I have attended a number of specialized seminars, some given by the Drug Enforcement Administration, the Narcotics Law Enforcement Narcotics Investigation, several given by the Organized Crime Institute Program at Barry College, dealing with, specifically, narcotics, conspiracy, cash flow investigation, focusing on narcotics investigation, advanced methods of narcotics investigation and so on.

In addition to that, we have have numerous seminars with the prosecutor's office in search and seizure and other techniques that we use at the airport.

Q On August 9, 1979, how long had you been specifically assigned to the airport unit?

A For over one year.

Q How long have you been a police officer?

A For nearly six years.

Q What did your duties at the airport unit include?

A The primary duty of the airport, or the primary objective of the unit, is the identification and interception of persons engaged in violating the narcotics law.

Q Pursuant to your duties, did you have occasion to watch passengers at the airport?

A That is correct.

Q How frequently?

A Several days of a given work week.

Q Approximately how many passengers do you watch in any given day?

A Of any given day, probably several hundred, maybe a few thousand, depending on the time of day.

Q Do you wear a uniform while you are working?

A No. I wear plainclothes.

Q Do you have occasion to watch any specific flights and, if so, why?

A We do watch flights to other major cities in the United States. We do tend to watch, particularly, non-stop flights outbound from Miami and the reason for this, being narcotic investigators, we are interested in the traffic flow of narcotics that leave Miami, source narcotics from Miami, to the other major cities or distribution points. Miami is a major source city. [objection overruled]

A [Continuing] Miami being a major source city for cocaine and marijuana throughout the United States at this time.

Q Based upon your training and experience, have you found anything peculiar to the airport as far as Miami being a source city for cocaine and marijuana?

MR. FINGER: Objection, again, as to relevancy.

THE COURT: Are you getting involved in the profile of this case? What is the relevancy?

MS. COHAN: In the experience at the airport with her arrests for narcotics violation.

THE COURT: What does that have to do with this particular one?

MS. COHAN: This particular one, I would proffer, was a bulge on a child consistent with narcotics and I need to know her experience in arrests relative to the bulge.
[objection overruled]

A In the period of time I have spent at the airport, I have had occasion to arrest a number of people using the airport, using air carriers to transport out of Miami to other major cities.

This has been accomplished, as we have seen, in three principal ways.

One of the ways and this is not in any particular priority, but one major way is in luggage which is taken on board the aircraft with the passenger.

Another major way is by use of a package or air freight speed pack; and and third way is by use of the body carry.

Q Were you working on August 9, 1979, at the airport?

A That is correct.

Q Who was your partner on that date?

A Detective Everett Titus.

THE COURT: Where is the defendant, please?

MR. FINGER: In the courtroom, Your Honor.

THE COURT: Go ahead. She was not with you. I wanted to be certain that there was not any issue raised later that she was not present at a substantial part of her trial.

MR. FINGER: On, no, Judge. She is here.

Q [By Ms. Cohan] At approximately 5:15 on August 9, 1979, did you have occasion to see someone who later became known to you as Sherolyn Harrison?

A Well, not just at 5:15, a little bit later than that, yes, I did.

Q Approximately what time did you first see Sherolyn Harrison?

A Probably closer to 5:20, about five minutes later than that. I didn't notice her right initially at the beginning of this investigation.

Q Did you see Miss Harrison in court today?

A I think I see her in back there. She is kind of blocked to my view.

Q Can you please attempt to point her out?

A I think she is in the second row from the back sitting to my right behind the man leaning over.

MS. COHAN: Indicating the defendant Sherolyn Harrison.

A [Continuing] Next to the lady with the baby.

MR. FINGER: Are we talking about to the right or left of the lady with the baby?

THE WITNESS: To the right.

MR. FINGER: As you are looking at it?

THE WITNESS: To my right, sir.

Q [By Ms. Cohan] Prior to observing Miss Harrison, did you observe anyone else at the airport that drew your attention?

A Yes. I did.

Q Were you able to subsequently identify these individuals?

A Yes. I was.

Q Can you identify them for us today?

A Neither of those individuals are in court, but one was a man by the name of Evans and the other was a woman by the name of Nancy Aphrodite Raymond.

Q What did you first observe?

A The first thing I observed was the man Evans barging in front of a line of people at National Airlines' ticket counter.

Q Approximately how many people were in line?

A Probably fifteen or twenty.

Q Will you describe the National Airlines' ticket setup for us, please?

A The area where Evans was barging into is an area of the ticket counter reserved for passengers waiting to purchase tickets for flights that date. It is not a regular check-in area if you already have your ticket. It consists of a roped area where passengers line up to wait their turn to approach the counter whenever a ticket agent becomes available to help them.

Q Did Mr. Evans get in line?

A No. He didn't.

Q Tell us what he did.

A He climbed over the ropes and walked directly to a ticket agent and there was some conversation which I was not able to overhear, but then he stood to one side and, eventually, spoke again with the ticket agent and essentially proceeded with his transaction at the counter.

Q After Mr. Evans had arrived at the counter for the second time, what occurred?

A A moment or so after that, a woman, the woman Nancy Raymond, approached him and I hadn't seen her

at first. I hadn't noticed her at first until she actually went over and spoke with Evans.

The only part of the conversation that I heard there was for a moment. He told her to wait in line and then a few minutes later, as he was completing his ticket transaction, he told her to go on toward the gate and he would catch up with her.

Q Did you see the ticket transaction take place at National Airlines?

A Yes. I did.

Q What did you observe?

A What I observed was Evans handing over a number of one hundred dollar bills. I could not hear the entire conversation, but he did request the flight leaving shortly for Los Angeles.

He received some change. There was one ticket handed to him and there was no luggage checked in.

Q Did Miss Raymond have any luggage which you observed?

A She had a tote bag, small carry-on — very small bag and I believe she had a purse.

Q Did Mr. Evans have any carry-on luggage?

A He also had a small bag, a small tote bag.

Q Approximately what time was the ticket transaction completed?

A About 5:20 or a moment or so after that.

Q Approximately what time was the flight to Los Angeles to depart?

A 5:30.

Q After Mr. Evans had obtained the ticket from National Airlines, what occurred?

A He left the ticket counter and he began walking very quickly, almost running. By this time I had watched in the direction that Nancy Raymond had walked and she had by this time met up with Sherolyn Harrison who was carrying a baby, a toddler, I should say.

He caught up with her some distance — he caught up with the two women some distance from the portion of the counter where he purchased the ticket. They turned and walked down the concourse together and went up the escalator together.

Q When you say "toddler," what do you mean?

A A child approximately a year and a half to two years old.

Q Was Miss Harrison in possession of any other belongings?

A I think she may have had a purse with her. I don't recall any other luggage.

Q Where did Miss Harrison meet up with Mr. Evans and Miss Raymond?

A Miss Harrison met up with Raymond, the girl, some distance from the National Airlines ticket counter closer toward the entrance to the concourse, maybe, a hundred feet away from where the ticket was purchased and then Evans joined the two women near that area.

They had begun walking from that area and were walking toward the concourse.

Q During the course of your observations, where was Detective Titus?

A He was in the vicinity. He was watching along with me.

Q After the three of them turned after the main lobby, what then occurred?

A They went up the escalator and we continued to follow and watch as he passed through the security checkpoint at the concourse. After they cleared the security checkpoint, Detective Titus went over and spoke with Mr. Evans and I waited for a moment or so to watch whatever reaction might occur or what might happen on the part of the two women.

I observed as they looked back at Evans who had stopped walking and had begun to speak with Detective Titus, they looked quickly at each other and they quickened their pace and continued walking down the concourse.

Q What did you do?

A After they had walked a distance of about ten feet, I went over to them, introduced myself, and asked if I could speak with them a few minutes.

Q How did you introduce yourself?

A I told them that my name was Detective Wolfe and that I worked for the police department and I would like to ask them a couple of questions, if they had no objection, before they caught the flight.

Q For what purpose did you identify yourself as being from the sheriff's department?
[objection overruled].

A Quite simply said that they should know exactly who I was and that I was — well, the main reason I introduced myself, if I am the least bit suspicious of a person in the airport, my experience has been that —
[objection overruled].

A [Continuing] It's been my experience that people who are sometimes carrying narcotics are afraid of a ripoff from some other source and would be more likely to be afraid of some stranger walking up to them and, maybe, react violently.

Q When you first approached Miss Harrison and Miss Raymond, did you have a firearm with you?

A Yes. I did.

Q Where was it?

A It was in a shoulder holster under a shirt under my jacket.

Q Did you have handcuffs with you?

A Yes. I did.

Q Where were they?

A Under my belt under my jacket.

Q Did you use anything to identify yourself?

A Just my badge.

Q How did you display that to Miss Raymond and Miss Harrison?

A I opened my badge case and showed it to them and, briefly, asked if I could speak with them just a moment.

Q Did you pull your weapon on them?

A No.

Q Did you touch either Miss Raymond or Miss Evans?

A Not at that point, no.

Q After you asked them if they would have any objections to speaking to you, what did they say?

A Miss Harrison, as I recall, did not say anything very much at that time, but Miss Raymond said sure, but she did not want to miss the flight. She did not mind answering a couple of questions.

Q What was your conversation at that point?

A I briefly asked if they had identification and if I could see it; if they would mind showing it to me. Sherolyn Harrison said she would not mind showing me any identification, but as it turned out, she did not have any. Nancy Raymond said she had some and began fumbling through her purse and opened up a purse and wallet and did not come across any right off the bat.

I asked Sherolyn what her name was — or I asked Miss Harrison what her name was and she said Harrison.

Q While you were talking to Miss Raymond and Miss Harrison, where were you located on the concourse?

A About twenty-five or thirty feet beyond the security checkpoint.

Q Were there other passengers in the area?

A Yes. There were people coming through the checkpoint and walking by.

Q Were there other police officers with you?

A Not right with me. I am quite sure there was an officer over at the checkpoint, but I am not positive.

Q How far away from the checkpoint were you?

A From the checkpoint or where the officer was?

Q The officer, I am sorry.

A Probably about forty feet.

Q Did he take any part in your conversations?

A Well, I am not even sure he was there. He certainly took no part in the conversation.

I am not sure — I am pretty sure there was one there, but I don't really remember.

Q Where were Mr. Evans and Detective Titus in relation to where you and the females were?

A They were standing between ten and fifteen feet closer toward the security checkpoint.

Q Whose back was to Mr. Evans and Detective Titus?

A The two women.

Q Did you notice anything about the behavior of Miss Harrison and Miss Raymonmd while you were talking to them?

A They were ill at ease. They kept turning over — Miss Raymond looked over her shoulder twice to look back at Evans to see what was going on and then kept fumbling through her wallet.

Harrison looked over two or three times to where Evans was standing and then looked back and they were both very ill at ease.

Q Did Miss Raymond show you identification?

A Before she showed me identification — no. She did not.

Before she showed me identification, I asked both women if I could have permission to look through their belongings.

Q To which belongings were you referring?

A I was referring to two purses, the two purses and a tote bag which they had with them.

Q What did either of them say?

A Miss Raymond replied that she had no objections and all of the items were put down on a little bench that was right there.

Sherolyn Harrison said she did not mind and Miss Raymond went to open one of the purses and as she was doing that, I stopped for a minute. I said, "I just want to be sure that you understand that you do not have to let me do this and this is up to you."

And she said sure, there was no problem with it and to go right ahead.

Q Did you do so?

A Yes. I did.

Q What, if anything, did you find?

A I found, of significance to me, a National Airlines ticket envelope with three one-way tickets, first class, from Los Angeles to Miami four days earlier in the names of Mr. and Mrs. Kahn and Mr. Jones. I found identification from Miss Raymond that said her correct name and, along with the tickets, were three used first class boarding passes in the same ticket envelope and there was a small cigarette case with one or two marijuana cigarettes.

Q What, if anything, occurred at that point?

A I searched through the other belongings and there was no contraband found and the women began walking down toward — we all began walking down toward the gate.

At this time Evans and Detective Titus had finished their conversation and they more or less joined this group of people who began to proceed down to the gate.

Q Did you learn, during the course of your conversation with Miss Raymond and Miss Harrison where either of them was from?

A Sherolyn Harrison told me she was from Miami and she was going to Los Angeles for a few days and Nancy Raymond —

[objection overruled].

Go ahead.

A Nancy Raymond told me she lived in Los Angeles and she was going home.

Q During the course of your conversations, did you learn about any additional luggage either of them might have?

A I asked if they had any checked luggage and they said no, they did not. The ticket was in —

MR. FINGER: I object, Your Honor, at this point as to who "she" is. Is she Nancy Raymond or my client?

THE COURT: Please identify.

A [Continuing] I asked both women if there was additional luggage and the response was not, there was no additional luggage from both women.

Q While you were conversing with Miss Harrison and Miss Raymond, where was the toddler?

A The entire time the child was in Sherolyn Harrison's arms. She was holding the child.

Q How was the child positioned?

A More or less straddling the front of her body. She would move the child from one hip to the other.

Q Where were the legs?

A Either dangling or around her waist.

Q How was the child dressed?

A She was dressed in a two-piece outfit consisting of slacks and a little smock top.

Q Was her entire body covered by that outfit during the time you were talking to Miss Harrison?

A Pretty much, yes.

Q Was it a female child?

A Yes, a little girl

Q When she started walking down the concourse with Miss Harrison and Evans, what occurred?

A I shared my observations with Detective Titus who shares his observations with me of what he had learned in his conversations and what I had learned in my conversations.

Q What, if anything, did you learn?
[objection overruled].

A I learned that Detective Titus had looked at the ticket in Evans' possession and discovered that it was in the name of Mr. and Mrs. Kahn and Mrs. Johnson and that Evans said that he didn't have any identification. I learned that Detective Titus had asked Evans what his name was and that Evans had told him that he was Mr. Kahn, but when he was unable to find any identification, he changed that story and told Detective Titus that his name was Oswald.

Detective Titus further told me that he had also received permission to check the bag that was in Evans' possession; checked it, found no contraband, but that it had the name Harrison on it and that neither the name Harrison or Oswald had anything to do with the names on the ticket that these three people were flying under and, obviously, I knew then, also, that the name Harrison and Raymond had no similarity to Kahn — Kahn and Johnson which were the names on the ticket, party of three, that these three people were going to use to fly.

Q What, if anything, did all of these things mean to you?
[objection overruled].

A The inconsistencies, the use — the inconsistencies and the story that was given by Evans coupled with the use of alias names for this trip to Los Angeles coupled with such a small amount of luggage for a party of three with a baby traveling across country one way, suggested to me the possibility that there was a violation of narcotics laws going on; that, perhaps, these people were smuggling narcotics.

Q At that point did you act on your suspicions?

A Not quite yet. We continued walking down the concourse. We had checked the belongings and there was no contraband.

Q At this time was Miss Harrison free to leave?

A Yes. She was.

Q As you were arriving at the gate, what occurred?

A Evans gave the ticket to Nancy Raymond who proceeded to turn it in at the gate for her boarding passes. When she handed the ticket to — as she was handing that ticket over, I had a chance to observe the names on the ticket and the spelling of this Mr. and Mrs. Kahn was completely different from the Mr. and Mrs. Kahn of the first ticket that I had seen, or the first two tickets I had seen, in her purse which was another inconsistency, a suggestion of another alias being used.

As we had walked down the concourse, I had become suspicious of a bulge which I observed in the front of the child's abdomen.

Q Would you describe the bulge, please.

A It was a thickness which I could see from the side of the child. Her dress had ridden up and the top portion of the little trousers which she was wearing was completely visible now as well as a portion of the abdomen over the top of the pants.

She looked as though she was wearing a diaper or Pamper underneath the little trousers, but it was twice or two and a half times as thick in the front around the tummy or abdomen, as it was across her back.

Q Have you had occasion to diaper an infant or toddler before?

A Yes, I have.

Q Was this bulge consistent with anything in your experience of diapering infants?

A No, not at all.

MR. FINGER: Objection. Personal experience is irrelevant in this particular cause, Your Honor. That bulge could have been caused by any a number of things beyond her expertise as a mother.

THE COURT: Overruled. We will certainly give you an opportunity to delve into that.

Q [By Ms. Cohan] When you noted the bulge, based upon your training and experience, what did you think it was?

A I suspected there was contraband in that bulge.

Q Why?

A Why?

Q Yes.

A I have had experience with the persons transporting narcotics in baby's diapers before.

Q On how many previous occasions, approximately?

A Personally, once before, but I am aware of several occasions where — I am aware of six other instances in the customs enclosure at Miami International Airport where this method has been used.

Q Have you had previous occasion to observe body carrys of narcotics?

A Yes. I have.

Q Approximately how many prior occasions?

A About forty or fifty — about forty.

Q Was the bulge which you observed in this case consistent with those bulges other than the fact that it was on an infant?

A I would say so.

Q What did you do when you noticed the bulge?

A Well, when this group arrived at the end of the concourse, I asked Harrison to put the child down on the floor and she did and I felt inside the front of the waistband of the child's trousers and I felt a plastic bag containing a granular substance that was consistent with cocaine.

Q What did you do at that point?

A I told her that she was under arrest and I verbally advised her of her Miranda rights.

A "Her" being Sherolyn Harrison?

A That is correct.

Q How did you advise Miss Harrison of her Miranda rights?

A At that time, verbally, from memory.

Q Did you at that point seize the cocaine?

A Well, I took the baby and carried the baby from that point on. I did not remove the cocaine. I checked where it was and it turned out there was a Pamper in between the bag of cocaine and the baby's skin and I decided to leave it until we got back to the station where I removed it.

Q For what reason did you check that baby initially? In other words, after you had noticed the bulge, why did you check the baby?

A I think once I become suspicious that that bulge was cocaine, I was primarily interested in the safety of the walfare of the child at that point.

Q Why is that?

A If the wubstance that I suspected was — that is, cocaine was actually in that child's pants near her skin or any mucous membranes or opening — [objection overruled].

Q [By Ms. Cohan] Go ahead.

A I suspect that contact of this kind of a substance in a small child, perhaps, in any fashion, could be quite dangerous for that child.

Q Were you afraid for the baby's safety?

A I was certainly very concerned about the baby's safety and welfare.

Q After you had reached into the baby's pants and felt the substance, how long after that did you take the baby into your custody?

A Immediately.

Q How did you do so?

A I picked her up.

Q Where were Miss Raymond and Mr. Evans?

A It was right about the time that I advised Harrison that she was under arrest Raymond returned with Detective Titus. He had been — I think they had gone to a private area for a pat down or search of Mr. Evans. I am not sure.

Miss Raymond was standing in the vicinity. She walked over and I advised her whe was also under arrest.

Q Had you at that point seen the cocaine?

A I had not.

Q Why not?

A I hadn't actually looked at it.

Q Why was that?

A I wanted to be able to remove it carefully and I didn't know exactly how it was placed; whether it was secured with tape or exactly how it was secured

inside the baby and I didn't want to take a chance of opening it quickly and having it spill all over and having it get on the baby or, you know, get anywhere.

Q Did there come a point in time when Miss Raymond and Mr. Evans were placed under arrest?

A Almost immediately, as soon as they were back together there.

Q For what were they arrested?

A Conspiracy.

Q Was anything seized from Mr. Evans?

MR. FINGER: Objection as to its relevancy.

THE COURT: What is the relevancy at this point?

MS. COHAN: Your Honor, I would proffer that the ticket in Miss Evans' possession, the boarding passes for the flight five days previously or four days previously was, in fact, seized from Miss Evans and the State will seek to introduce that as evidence.

THE WITNESS: From Miss Raymond.

MS. COHAN: I am sorry. Yes.

THE WITNESS: The three passenger receipts and boarding passes I found in Raymond's purse were seized.

Q Was anything seized from Mr. Evans? [objection overruled].

Q [By Ms. Cohn] Based upon your training and experience, with what was the substance you seized from the infant consistent with?

A The substance was consistent with cocaine.

Q Did you seize anything else from the infant?

A The outside, the bag securing it more or less to the baby, was a pair of pink plastic pants. We took those, also.

Q At what point was Miss Harrison no longer free to leave?

A At that point that I felt the substance in the baggie in the baby's pants.

Q Up until that point had you ever been discourteous to her?

A No, ma'am.

Q Had you ever attempted to conceal your identity?

A No.

Q Had you ever threatened her in any fashion?

A No. I had not.

Q Had you ever demanded she do anything up until the point you told her to put the baby down?

A No. I did not.

Q During the course of talking to Miss Harrison, did she answer all of your questions in a coherent fashion?

A There were a couple of questions she just didn't want to answer. She didn't answer them.

MR. FINGER: I object unless this prosecutor pins down what conversations we are talking about.

THE COURT: Sustained.

Q [By Ms. Cohan] During the course of your conversation with Miss Harrison, did she appear to understand what you were saying prior to being placed under arrest?

A Yes. She did and she was cooperative.

MS. COHAN: I would proffer there is no motion to suppress statements right now.

THE COURT: Unless there is something I have not seen—

MR. FINGER: No, Judge.

THE COURT: Anything else?

MS. COHAN: One other question.

Q [By Ms. Cohan] Other than yourself and Detective Titus, until the time that Miss Harrison was placed under arrest, were there any other officers involved in that?

A No. There were not.

MS. COHAN: Thank you.

THE COURT: Mr. Finger.

CROSS EXAMINATION

BY MR. FINGER:

Q Detective Wolfe, the reason you initially approached the two young women is because you were suspicious of the activity that you had witnessed earlier involving, specifically, Mr. Evans and Miss Raymond. Is that correct?

A I think that was part of it.

Q What is the other part?

A Well, some of it had to do with the fact that the three people, the three individuals, seemed to me to be trying to stay kind of far apart and not together at the ticket counter purchasing the tickets.

Q Detective Wolfe, up to the point where you walked up to the two young ladies and identified yourself, what specifically did the defendant Sherolyn Harrison do that aroused your suspicion? What did she do — not

what the other people did — but what was she doing that made you suspicious of her, specifically?

A I would say that what made me suspicious of her, not so much an active thing she did, perhaps more what she did not do.

Q What did she not do?

A That was — she was hanging very far away from the other two people for the period of time the ticket was being purchased as though to disassociate herself. I was surprised to see her together with the other two people.

Q In fact, right up until the time that Mr. Evans caught up with the two women, you believed that Sherolyn Harrison had nothing to do with Evans and Raymond?

A That is right. I didn't see her enter the scene until, really, quite at the end.

Q So your questioning or your introduction to Miss Harrison initially was based upon the suspicion which you had based upon the fact that she was being aloof or apart from the other two people and, subsequently, met up with and that is why you wanted to talk to Sherolyn Harrison.

Correct me if I am wrong.

A That was part of it, certainly.

Q What else had she done besides that?

A She had, herself, alone, apart from the other two, not done anything else.

Q For all you know, she could have been seeing those two people off at the gate, "See you around. Have a nice trip to L.A."

A Yes. That is possible.

Q Did the fact that she was carrying a baby arouse your suspicions?

A Not initially, no.

Q You are not suspicious of young ladies in an airport carrying babies, are you?

MS. COHAN: Objection. Argumentative.

A Of course not.

THE COURT: Overruled.

Q In fact, Detective Wolfe, you did not even notice Sherolyn Harrison until after the tickets had already been paid for by Mr. Evans.

A That is correct.

Q In fact, you did not notice Sherolyn Harrison until Nancy Raymond spoke to her very briefly and they started to walk off down the concourse.

A That is correct.

Q And as the three of them were walking down the concourse, Detective Titus approached the male, Mr. Evans. Right?

A Yes, sir.

Q And the two women continued to walk on as Titus stayed back to talk to the male. Right?

A Yes.

Q And that made you believe that the three of them were traveling together?

A No. What made me think the three of them were traveling together was I was expecting a party of three based upon the amount of money Evans paid for the ticket at the counter.

Q How much change did he get back? You did not mention that in the direct examination.

A It was a small amount of change. He paid in all one hundred dollar bills.

Q How many one hundred dollar bills?

A Four — I think four or five.

Q You did not notice how much change he got back?

A It was a small amount of change, a few dollars. I would expect it might have been — if I might look at my notes.

A Sure.

A It was six one hundred dollar bills and he got back — the total fare was about, in the vicinity of $565, $575, so he got back $30 or $40 back.

Q You specifically recall him receiving $30 or $40 back?

A Well, I knew then roughly what the fare was for three people traveling. I saw him hand over the six one hundred dollar bills.

Q Did you testify on direct that you did not have an opportunity to look at the ticket from where you were positioned; see the ticket, itself?

A That is correct.

Q So you could say at the time that you approached the group of three individuals how many people that ticket was for?

A The only reason I expected — you are correct. The only reason I expected three people was from the amount of money he paid for the ticket.

Q Could not have been four?

A I was expecting three.

Q Could it have been a ticket for four just as easily as for three?

A Not based on the number of bills he handed over. They were one hundred dollar bills.

Q So they are walking down the concourse and Detective Titus comes up and introduces himself, assumedly, to Mr. Evans, and then the two women walk on.

A They continued. They looked back and continued walking.

Q That is when you walked up and approached them. Right?

A Yes, sir.

Q And they were walking along; they were walking along down the concourse when you walked up and identified yourself?

A Yes.

Q And they stopped and talked to you?

A Yes. They did.

Q And you told them your name. Right?

A Yes.

Q And you told them you were from the sheriff's office. Right?

A Yes.

Q You told them you would like to ask them some questions. Right?

A Yes.

Q And at that point, I believe you testified on direct, Sherolyn Harrison did not say anything, did she?

A I don't remember her specific words. My impression, my memory, is that she nodded in the affirmative and Nancy Raymond did most of the talking.

Q You just forgot to mention that on direct examination about the nod in the affirmative?

MS. CCHAN: Objection.

THE COURT: Sustained. You can argue it to me.

Q [By Mr. Finger] You asked for identification from the two young ladies?

A Yes.

Q And you asked permission to search their belongings that they were carrying. Is that correct?

A Yes, sir.

Q At the time that you approached the two young ladies initially you had no idea, did you, whether or not any of these tickets that Mr. Evans had purchased were, in fact, for Sherolyn Harrison, did you?

A No idea, no idea, a suspicion that the three were traveling together and that he had the – it was the only assumption I could make at that point.

Q How about the fact that they were going to meet a third person at the gate and Sherolyn Harrison was there to see them off. Is that possible?

A Certainly.

MS. COHAN: Objection. Speculative.

THE COURT: Overruled.

Q [By Mr. Finger] That third ticket could have been for any third person. Is that right?

A It could have been.

Q I am talking about after the time you approached the two young ladies you did not know that Sherolyn Harrison was going to take one of those tickets and board the plane; she was just along with Nancy Raymond who you saw talking to Mr. Evans.

A My best observations indicated these three people were traveling together.

Q I appreciate your best observations. I am concerned with your knowledge of the tickets that you have seen Mr. Evans purchase in regards to whether or not they were going to be used by the defendant Sherolyn Harrison.

A That is correct.

Q You mentioned when you approached Miss Harrison and Miss Raymond they seemed ill at east.

A After a moment, yes.

Q How long have you been a police officer?

A Nearly six years.

Q You have had an opportunity to stop lots of people in the course of our employment?

A I have, certainly, stopped and spoken to lots of people, yes.

Q I am not just talking about narcotics; in your capacity as a police officer?

A Sure.

Q Is it unusual that a person is ill at east when they are approached by a police officer, identified as a police officer? Do you find that unusual?

A I don't find it unusual among certain people.

Q What kind of people?

A People who, perhaps, are anxious about something they may be doing wrong, in violation of the law. I think — I am not a very intimidating person. Most people are not nervous when I speak to them.

Q In your capacity as a police person, when you are talking to them in the capacity and you stop even an innocent person, they get nervous. Right?

A Not very often in my experience.

Q Ever make any traffic stops, pull people over on traffic stops?

A Yes.

Q And have it turn out you really had no basis for the stop or you let them go or things are not as you assumed?

MR. COHAN: Objection.

THE COURT: Overruled.

A I don't understand.

Q [By Mr. Finger] Did you ever pull over on a traffic stop and found you were mistaken, that the taillight was not out or they were not speeding? Have you ever made a mistake when you stopped and it turned out your suspicions were not right?

A Yes.

Q Were these people nervous when you spoke to them?

A Not consistently, no.

Q The ticket stubs that you mentioned, those were found in Nancy Raymond's bag. Correct?

A Yes.

Q And that little bit of marijuana was found in Miss Raymond's bag. Correct?

A Yes.

Q In fact, nothing of any note was found in anything that you could attribute to being in the actual or constructive possession of Sherolyn Harrison, my client?

A Nothing was found except the cocaine in the pants of the baby.

Q I am talking about the search. We are now at the point where you are searching the women's purses.

A Their purses, no. That is correct.

Q The women, themselves, the two young ladies, were wearing rather tight fitting clothes at that time, were they not?

A Close fitting, yes.

Q So, at least, in your own mind you were satisfied after you had made the search of the purses that these women were not carrying contraband on their body?

A Yes.

Q And it was while you were walking along after this search revealed nothing, that you noticed the bulge in the baby?

A When you say "the search revealed nothing," it revealed a few things to me.

Q Who did you arrest after the search of the purses?

A It didn't reveal anything I based an arrest on at that time, but it heightened my suspicions somewhat.

Q How did the fact that a small amount of marijuana in Nancy Raymond's purse heighten your suspicion?

A The marijuana didn't necessarily heighten my suspicions about anything. It is very inconsequential.

THE COURT: I did not hear the last half of the answer or the first part of the question.

MR. FINGER: I am sorry.

THE WITNESS: The marijuana, a couple of marijuana cigarettes, did not increase or decrease my suspicions. It was rather an inconsequential amount of contraband.

What caused me to be somewhat suspicious was the three receipts for a cross country flight, first class, from Los Angeles to Miami three or four days earlier for three people in names which had nothing to do with either of the two names of the two women.

Q Found in Nancy Raymond's purse?

A Found in Nancy Raymond's purse. This suggested to me aliases being used for travel and that I have found to be very consistent with narcotic traffickers.

Q So the fact that you found stubs in Nancy Raymond's purse which indicated there were aliases made you suspicious of Sherolyn Harrison?

A Yes, to an extent.

Q Why did you not arrest Nancy Raymond after you searched the purse?

A I would arrest her for what?

Q Possession of marijuana.

A In cases where there is a misdemeanor or less amount of marijuana, what I often will do is seize the contraband, take the information of subject and present the facts to the State Attorney.

Q And let the defendant get on a plane to fly to L.A. while you are doing it?

A Sure. I do not really have to arrest somebody for two marijuana cigarettes.

Q That is a crime in the State of Florida, is it not?

A I know, but I am not obligated to arrest somebody for two marijuana cigarettes. I am obligated to seize

the contraband and bring the facts of the case immediately to the prosecutor.

Q You felt obligated to arrest Sherolyn Harrison, did you not?

A I felt that that was — first of all, it was a felony as opposed to a misdemeanor.

Q You decided you would make that determination without talking to the State Attorney. Right?

A Well, yes, I did.

Q So you are walking down the concourse and Sherolyn Harrison is carrying the toddler in her arms and you noticed the bulge in the toddler —
[Discussion of other matters]

Q [By Mr. Finger] Have I got it back so far? When you were walking down the concourse is when you noticed the bulge in the toddler?

A Yes.

Q At that point you were still pretty much convinced in your own mind that there was narcotics somewhere? Would that be safe to say?

A Well, yes. I think that is safe to say. I was convinced that something was going on. My suspicions were more increased rather than decreased, especially as I conferred with Detective Titus.

Q You just felt that there was some contraband out there, but you just could not figure out where the stuff was?

A I sure couldn't, not immediately.

Q You say the bulge around the baby's stomach protruded about an inch to an inch and a half, approximately.

A It was more than that.

THE COURT: Could I see the deposition, Miss Bailey?

MR. FINGER: We are on Page 38 or 39.

THE COURT: Go ahead.

MR. FINGER: I will read them verbatim.

Q [By Mr. Finger] Do you recall giving a deposition at the Public Defender's Office on September 14 in my office?

A Yes.

Q You were sworn under oath to tell the truth?

A Yes.

Q I am on Page 38 and it would be, like, the second question from the bottom. Do you recall the question:

"Q You couldn't approximate how many it was protruded? Did it protrude a couple of inches?"

Then you indicated.

"Q Are you indicating an inch and a half?"

And your answer:

"A You mean the overall bulge?

"Q My question is: The whole thing an inch and a half to two inches? The front thickness was probably protruding an inch and a half to two inches?

"A Yes."

A Yes. I believe you just asked me if I said it was an inch to an inch and a half and I said it was a little more than that. I have a maximum here of two inches.

Q Okay. A maximum of two inches.

A That is probably about right.

THE COURT: Counsel, it is late in the day and Mrs. Rock would really like to keep you under 300 words a minute.

Q [By Mr. Finger] You would say a maximum of about two inches protrusion?

A Maximum, yes, sir.

Q And you could not really tell how long the bulge was, could you?

A No, sir.

Q You believed it was cocaine. Right?

A Not immediately.

Q When did you believe it was cocaine? After you reached in?

A When I felt it.

Q You suspected it was cocaine at that point?

A I suspected there was contraband there. I couldn't believe it was cocaine until I felt it.

Q What kind of contraband did you suspect it was?

A Narcotics.

Q What kind of narcotics?

A It could have been marijuana, heroin, cocaine, pills, a packet that would form that bulge of that sort and there are a number of different items that could form that kind of a bulge.

Q There certainly are, are there not?

A Yes.

Q You were afraid of that narcotic, whatever it was, coming into contact with the baby's skin, abdomen, whatever it was. Right?

A I was concerned for a child being in contact with any contraband of that sort in any fashion.

Q You have had occasion during the course of your employment to touch lots of different types of contraband, have you not? You pick it up, touch it, have it come in contact with your skin, have you not?

A No.

Q You have not picked up a lot of contraband?

A We try to avoid touching contraband with our bare hands as much as possible. It is a very bad idea to do it.

Q Have you ever felt cocaine?

A Through a bag.

Q You never touched it?

A Once — twice.

Q Not on this occasion?

A No. I did not

Q I mean, your actual hand?

A I try most of the time to avoid touching any contraband, any substance I do not know the physical composition of with my bare hands. There are a number of substances that could be very injurious to you and, as a police officer, I come in contact with lots of them and you try to avoid touching, especially narcotics, heroin and cocaine, with your bare hands.

When we take samples for field tests, we use a little paper snip or spoon or something like that. You don't touch it.

Q And you did not feel or touch the actual cocaine in this particular case, did you?

A Except through the plastic bag.

THE COURT: She said she has had no direct contact with any substance in this case. It was a plastic bag or a piece of plastic that separated the finger.

Q All you felt was a plastic bag with something swishy or soft in it. Would that be safe to say?

A A powdery substance with a few little crumbles in it which is consistent to substances I felt before which were subsequently found to be cocaine.

Q But no actual cocaine on the outside of the bag or gritty substance?

A There may have been minute amounts. I did not detect any, myself.

Q You are not a medical doctor, are you?

A No, sir.

Q What narcotics, particularly, that you deal with in the course of your employment are particularly hazardous to one's touch, if you know?

A Well, any substance that we come in contact with, if you do not know what the chemical composition of it is — the ultimate chemical composition of, you would take a precaution to avoid touching it.

Q In fact, you suspected this was cocaine. Is that not what you thought that the baby was carrying; that it was cocaine.

A Yes.

Q Do you know if cocaine causes any harm if you touch it? Does it cause sores, peeling of the skin, chaffing? Are you aware of that? Do you know?

MS. COHAN: Objection. It is beyond her knowledge.

THE COURT: Overruled. She can say that. Do not get lazy just because you are a lady. You want to be treated just like everybody else. Up on the feet.

A I am not specifically aware of cocaine being absorbed into normal, unbroken skin. I am specifically aware of the ability of cocaine to be absorbed through mucous membranes of the body and if it comes in

contact with various orifices, mouth, vagina, sinuses, it can be absorbed and small amounts would be fatal to a child.

I have had experience with people who have secreted cocaine in body orifices where the package has ruptured and the person was dead before they got to the hospital.

Q That was not at all the situation here. You had no reason to believe anything was secreted in any orifices of that baby, did you?

A I had no reason to believe it wasn't.

Q You had no reason to believe it was not secreted in a body orifice of Nancy Raymond, did you?

A That is true.

Q Did you do a body cavity search of Nancy Raymond to make sure it was not hidden there?

MS. COHAN: Objection.

THE COURT: Overruled.

A After she was arrested. She was searched.

Q How about prior to her arrest?

A No. She was not.

Q Do you know if a body cavity search was done on Mr. Evans to make sure he was not hiding anything in any orifice?

A I do not know.

Q Did you do a body cavity search of Sherolyn Harrison to make sure she was not hiding anything in any orifice?

A I did not do a body cavity search.

Q When you saw the bulge, you told Sherolyn Harrison to put the baby down. Is that not what you did?

A Yes.

Q And she complied?

A Yes. She did.

Q That is when you reached in and felt the soft bag?

A That is correct.

Q And you never ever got Sherolyn Harrison's consent to reach into the baby's pants to feel around in there, did you?

A At no time did I receive her consent.

Q Obviously, the baby never gave you any consent, did she, because she could not talk.

A No, sir.

Q MR. FINGER: That is all.

Q And from where you were looking at the side, it came up about two or three inches?

A [Indicating] Yes.

Q So we have it protruding a couple of inches and coming up about three inches?

A About.

Q At that point you were concerned with the physical well being of that baby. Is that not what you testified on direct?

A When I began to believe that there was contraband secreted on the baby, that is the point at which I began to be concerned about the welfare of the child.

Q Because you were afraid because of any mucous membranes that may be in contact with that suspected narcotics might cause some sort of medical ailment to the baby?

A I would be concerned any time a child might be placed near a substance such as cocaine, marijuana, heroin, pills, you name it.

Q Did you say something on direct examination about a baby's skin or mucous membranes coming in contact?

THE COURT: She said that.

A Any part of the baby.

Q In this case, it would be the baby's abdomen area. That is where you saw it. Right?

A That is where I saw most of the bulge.

THE COURT: Redirect. Do you have anything?

MS. COHAN: Just a couple of questions.

REDIRECT EXAMINATION

BY MS. COHAN:

Q Based upon your training and experience at the airport, do you know the price of a ticket to Los Angeles, approximately?

A Yes. Well, it varies. It is varying, but at that time it was approximately $150 to $125, something in that vicinity.

Q As a police officer, do you, in fact, have the discretion to arrest a misdemeanor?

A Yes. I do.

RECROSS EXAMINATION

BY MR. FINGER:

Q You decide when you are going to exercise that discretion and when you are not?

A No — I am sorry. What?

THE COURT: That is what discretion means.

MR. FINGER: That is what discretion means. I am concerned with the witness' understanding of what it means.

A Yes.

Q You exercise your discretion at whim. At your whim sometimes you will arrest for a misdemeanor and sometimes you will not?

A I like to think I use a little more than whim when I am doing something as serious as contemplating somebody's arrest.

Q You are a law enforcement officer sworn to uphold the law.

A Yes, sir.

Q There is a law in the State of Florida that says that possession of any amount of marijuana is, at least, a misdemeanor.

A That is correct.

Q And you decided, not withstanding your oath or duties as a law enforcement officer, you were not going to arrest Nancy Raymond for possession of that marijuana?

A The physical arrest of a misdemeanor amount of marijuana is discretionary.

MR. FINGER: Nothing further.

THE COURT: Do you have another witness?

MS. COHAN: No, Your Honor. The State rests.

THE COURT: Counsel.

MR. FINGER: The defense rests.

[Witness excused]

MR. FINGER: We have some argument, Your Honor.

Your Honor, I would move the Court to grant the defendant's motion to suppress the contraband seized in this particular case. I really believe that it is the analysis or the approach really calls for a two-step or, almost, a three-step analysis of what went on.

I submit to the Court there were really two stops and then a search. The initial confrontation when the police officer walked up to the two young ladies walking down, is, in fact, a stop or a seizure within the context of the fourth amendment and, as such, that must be based upon probable cause.

There are a number of cases, Your Honor, that hold that the type of factors which gave rise to this officer's suspicion is not sufficient even to make the approach. The prosecutor may contend that the initial confrontation is not a seizure. However, in Brown versus Texas, taken to the United States Supreme Court, cited at 99 Supreme Court 2637, the Court held that

whenever the police officers accosts an individual, refrains his freedom to walk away, she has seized that person. There are other cases.

There is the Elmo case which the State likes to cite frequently in which an individual was seated at a gate waiting for his plane to take off and the police went up to him, introduced themselves, much as the case is here. I think it is a Sixth Circuit—

MS. COHAN: Fifth.

MR. FINGER: A Fifth Circuit Court case and they walked up to him while he was seated waiting for a plane, introduced themselves. Subsequently, a search ensued and they found contraband.

That is distinguishable here, Your Honor, from this situation. The situation applies to the Brown case, the Supreme Court case, because Miss Harrison's freedom of movement was, in fact, restrained. That makes a seizure under Brown versus Texas.

They were walking down the concourse and they were approached by an officer and, when asked by the officer, they stopped and talked to her. What happened, in fact, is that they believe they have got to stop.

Cases such as United States versus Pope at 561 Federal 2nd 663 in 1977 stands for the proposition that the satisfaction of the drug courier profile, notwithstanding what the police officer may have said, that they did not use a profile, what she had was a suspicion which I really would contend to the Court is not well founded. It is suspicion by association.

I asked her specifically what Sherolyn Harrison had done which aroused her suspicion and the answer, Judge, was that she was with a couple of other people she was really suspcious about and, while we may have to agree that the suspicions were well founded as to Mr. Evans and Miss Raymond, what does that have to do with Sherolyn Harrison? All she did was wait off at a distance. Who knows whether she was waiting for them or not.

She was off in the distance holding the baby when she was approached by these two other individuals who the police were suspicious of. Sherolyn Harrison had not done anything up to the point she was met by these two other people. I do not think you can carry the suspicions as to two other people over to Sherolyn Harrison. She had done nothing.

They proceed down the concourse. They were — and I use this word — accosted by the detective who goes up and presents herself and asks to speak to them. In State versus Frost, a Third District Court of Appeals case — I do not have the official cite. It is in the Florida Law Weekly of August 24, 1979 — Judge Tanksley suppressed a seizure at the Miami Airport under very similar facts. The State took an appeal to the Third District Court of Appeals and the Court was affirmed in granting the suppression in Frost.

Your Honor, there was a consent subsequent to the stop which we do not even have here. The suspicion on the part of the police officer in Frost and the initial confrontation between the police officers and the subject in Frost was because Mr. Frost, in that case, appeared to be nervous and in a hurry and generally exhibited

characteristics the officer considered to be indicative of a possible drug courier.

I believe, also, in the Frost case, although I am not certain, that there was some discrepancy — yes, there was, Your Honor, a name discrepancy as to the driver's license Mr. Frost was carrying versus the ticket. So it is similar to what we had here as to the discrepancy of the names on the ticket and the nervous manner and walking hurriedly and, also, paying in cash. Everything the same. In that case the police confronted Mr. Frost and Mr. Frost subsequently gave his permission to search the suitcase from which the contraband was seized and the Court held that that initial confrontation when they came up to Mr. Frost and said, "We are police. We would like to talk to you," was, in fact, a stop and everything that flowed from that should be suppressed because the officers had neither probable cause to arrest Frost nor well-founded suspicions. In other words, those characteristics, nervous, walking hurriedly, inconsistent names, was not sufficient probable cause.

The Third District Court of Appeals applied an objective test in determining whether or not the police officers' confrontation is, in fact, a seizure because Elmo says under those certain circumstances it is not and what the Third District Court of Appeals says is that the crucial consideration is whether the person was under a reasonable impression that he was not free to leave the officers' presence.

We would only add that in determining whether such a reasonable impression existed, the test must be

what a reasonable man, innocent of any crime, would have thought had he been in the defendant's shoes. The Court goes on to say that it was the opinion of the Court that when an officer makes a show of authority he accosts the subject and takes advantage of social pressures which inhibit the subject from declining to deal with them. They are saying that when a police officer approaches you and says, "I am a police officer. I would like to talk to you," it is not likely that that person will respond by saying, "No, sir. I do not want to talk to you. I will not talk to you. I am walking away."

The Court realizes that when someone is confronted by a police officer, he does not have in his mind, "I am free to leave. I am approached for a casual conversation and I am free to leave." It is not reasonable to think that a person would think that in that situation.

Your Honor, I submit it would be naive for the Court to find that because the officer comes in and says, "Hey, they are free to leave. She did not have to talk to me," that that is what the defendant thought. "Here is my badge. I am a police officer. I want to talk to you." The average person in the defendant's shoes or anybody sees it as a situation, "Here is the police. I have to deal with him. I have to talk to them."

Incidentally, Your Honor, in the Frost case subsequent to the stop, Mr. Frost gave consent to search his bag, "Go ahead and search it," and they found the contraband. They do not even have that in this case. They do not have anybody's permission to go into the baby's diaper. The baby couldn't give permission and the mother did not. That was very specific.

I would submit to the Court that the initial confrontation is, in fact, a seizure and is a restraint to the freedom of movement and a seizure under Brown versus Texas and that anything they seize subsequent to the initial seizure must be suppressed. Everything must follow if the initial stop is bad. That assumes, of course, for purposes of this argument, that the initial stop was bad, and I think under Frost and under Brown it was bad.

The possibility exists, Your Honor, that it could be a Terry type of stop, but, again, in United States versus Pope, the Sixth Circuit Court of Appeals, United States Court of Appeals, held that although meeting a drug courier profile does not establish probable cause, facts known to agents which corresponds to characteristics in the profile may be considered along with information obtained from other sources in determining whether the agents did have probable cause to believe that an offense was being or had been committed.

In other words, even to justify the Terry type of a stop and frisk situation, an investigator-stop, you need more than they were nervous; they paid in cash; and it was inconsistent names. That does not even allow them, under the rationale of the Court in Pope to make a Terry stop. You need more besides nervous, in a hurry and the defendant was with other people of whom they were suspicious. This is a case of suspicion by association. Sherolyn Harrison has not done anything.

THE COURT: Let me see Frost. Hand it up.
[Repititious Argument omitted].

MS. COHAN: Very briefly, initially, I would direct the Court's attention to Rocha v Illinois which holds, primarily, that a defendant's fourth amendment rights are personal rights which can only be exercised by the individual aggrieved by the search and seizure. Here the individual aggrieved by the search and seizure Here the individual from whom the contraband was seized was a child. That child is not seeking to assert her own fourth amendment rights; rather, Sherolyn Harrison is seeking to assert the fourth amendment rights of another individual.

THE COURT: I have a pretty hard time buying an argument that the defendant does not have standing for the purposes of this case, if that is what you are getting at.

MS. COHAN: It is, Your Honor. I would also allege, as far as the boarding passes which were seized from the possession of Miss Raymond, that clearly Harrison has no standing to assert any fourth amendment claim as to those. Those, in fact, were not from her child. They were not from anyone who has any type of legal relationship to Sherolyn Harrison.

They were, in fact, seized from the custody of Miss Raymond. I would argue that that is controlled by Rocha v. Illinois.

As far as the issue of how this particular criminal episode is viewed, the State would argue, first of all, that Brown versus Texas; Elmo, U.S. v. Pope, Battlement, have all turn on a factual determination by the Court. If, in fact, in Frost there was a ticket seizure by the two officers who did not return the ticket. It as the

same thing that the Elmo Court said developed into the exact point of the seizure.

THE COURT: Let me get this verdict and then you can argue without being rushed, if you do not mind.

[Thereupon, a recess was had after which the following proceedings were had:]

MS. COHAN: Your Honor, the State's position is, first of all, that the factual situation in Frost as well as Battlement and Hayes – Battlement and Hayes being a decision as to consent and the trial court believing the testimony of one of the co-defendants who testified – Battlement and Hayes and the factual situation in Frost, which is completely dissimilar to the factual situation at bar, our factual pattern indicates that, in fact, Sherolyn Harrison was free to go and did proceed to the ticket gate in the company of Miss Raymond and Mr. Evans and that Miss Raymond was given the ticket folder and was in the process of checking in at the gate, getting boarding passes, when the child was searched and the contraband seized.

Consequently, our factual pattern is completely different than Frost, or, indeed, any of the other cases. It is most similar, if at all, to U.S. v. Pope which held that a bulge in the profile is equal to an articulable suspicion. I would argue that in this case what we do have is an initial contact with the defendant Sherolyn Harrison. From that contact the defendant walked away. She walked to the gate and while she was walking to the gate, Detective Wolfe was conversing with Detective Titus, comparing notes, as it were.

During the course of their comparing notes, she learned of additional suspicious circumstances, that being, that Mr. Evans who had the ticket for the three of them was carrying a bag with the name Harrison on it and, also, at that point saw the bulge in the child.

It is the State's position that Detective Wolfe had no less than a duty to investigate what that bulge was, not only, because she believed it to contain contraband, but for the health, safety and welfare of the toddler that Sherolyn Harrison was carrying.

It is the State's position that that search of the toddler was entirely reasonable and that is mainly what the fourth amendment prohibits. The fourth amendment prohibits unreasonable search and seizures. In this case, given the totality of Detective Wolfe's knowledge of the facts and circumstances and the bulge appearing on the toddler, the State would argue that it is unreasonable to expect Detective Wolfe to stand by and take no action. It would have been the course which would have been most injurious to the child and, indeed, would have frustrated all law enforcement efforts to protect that child's safety.
[Repititious argument omitted]

THE COURT: I am aware of the neighborhood cases, of course, and aware of the fact that we are to look to the reasonable application of criminal law and you know, relatively strict compliance with the law with infringement rights given to us by constitution and that there has to be some pretty good, valid reason, factually and legally, before somebody's rights can be infringed upon.

Frost is interesting because — and I cannot say that I disagree with the Third District on that — Mr. Frost was standing there. He had no place to go. They had his ticket and they had everything else that was his and they were not about to give it back to him. I think that is what Judge Schwartz was so offended by and I think rightfully so.

The totality of these circumstances, the facts that led up to a grouping of three being together, the initial discussion, which I think was lawful by the police officers with the two people in one section, the two ladies and the child and the gentleman in the other, and then their going about their business and thereafter the police officer's action relating to the child, all authorize the police officers under these circumstances and keeping in mind the tender age of the child, the location of the package of the contraband, to seize that which was within and next to the abdomen of the youngster in this case and I find that there was probable cause for the purpose of the initial stop and inquiry.

I find that that had terminated and that the officer had probable cause to believe that the contents inside the clothing of the youngster was, in fact, contraband based upon her background insofar as the propensity of drugs in skin areas certainly would have led to some action in that regard.
[Thereupon other matters not relevant here were discussed and the proceeding concluded].

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA

THIRD DISTRICT

JULY TERM, A.D. 1980

CASE NO. 79-2269

SHEROLYN DENISE HARRISON,
Appellant,

vs.

THE STATE OF FLORIDA,
Appellee.

Opinion filed October 14, 1980.

An Appeal from the Circuit Court for Dade County, Richard S. Fuller, Judge.

Bennett H. Brummer, Public Defender and Peter Raben, Assistant Public Defender, for appellant.

Jim Smith, Attorney General and Calvin L. Fox, Assistant Attorney General, for appellee.

Before HUBBART, C.J., and BARKDULL and BASKIN, JJ.

PER CURIAM.

The conviction under review will be reversed because the trial court erred in denying the motion to suppress

the contraband. See: Royer v. State, ___ So.2d ___ (Fla. 3d DCA 1980), opinion filed September 9, 1980; United States v. Mendenhall, _____ U.S. _____, 100 S.Ct. _____, 64 L.Ed. 497 (1980); Reid v. Georgia, _____ U.S. _____, ____ S.Ct. ____, ____ L.Ed.2d ____ (1980); case No. 79-448, opinion filed June 30, 1980.

Reversed and remanded for further proceedings not inconsistent herewith.

HUBBART, Judge (concurring)

I concur in the court's reversal in this cause solely on the ground that there was no reasonable basis on this record for the police to have conducted a full blown search of the defendant — even assuming, as the state contends, that the police either effected no prior temporary stop of the defendant at the airport or did so based on founded suspicion. As such, the search here was unreasonable and its fruits should have been suppressed by the trial court upon the defendant's timely motion. *Sibron v. New York*, 392 U.S. 40, 88 S.Ct. 1889, 20 L.Ed.2d 917 (1968); *Isham v. State*, 369 So.2d 103 (Fla. 4th DCA 1979), *cert. denied*, 381 So.2d 770 (Fla. 1980); *Schnick v. State*, 362 So.2d 423 (Fla. 4th DCA 1978); *Meeks v. State*, 356 So.2d 45 (Fla. 2d DCA), *cert. denied*, 364 So.2d 892 (Fla. 1978); *Carr v. State*, 353 So.2d 958 (Fla. 2d DCA 1978); *Harris v. State*, 352 So.2d 1269 (Fla. 2d DCA 1977); *Conner v. State*, 349 So.2d 709 (Fla. 1st DCA 1977).

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA,

THIRD DISTRICT

CASE NO. 79-2269

SHEROLYN HARRISON,

Appellant,

vs.

THE STATE OF FLORIDA,

Appellee.

MOTION FOR HEARING EN BANC AND MOTION FOR REHEARING

COMES NOW, the Appellee, THE STATE OF FLORIDA, by and through its undersigned counsel submits this Motion for Rehearing, *En Banc*, and Motion for Rehearing, to wit:

I.

1. That in compliance with Rule 9.331 the Appellee hereby submits that rehearing *en banc* is necessary herein in order to maintain uniformity with this Court's previous decisions in *Jones v. State*, 360 So.2d 1293 (Fla. 3d DCA 1978); *Collier v. State*, 353 So.2d 1219 (Fla. 3d DCA 1977); *Jester v. State*, 339 So.2d 242 (Fla. 3d DCA 1976); *Rodriguez v. State*, 189 So.2d 656 (Fla. 3d DCA 1966); *Bush v. State*, 369 So.2d 674 (Fla. 3d DCA 1979) and *Myles v. State*, 374 So.2d 83 (Fla. 3d DCA 1979).

2. That the testimony this Court has overlooked the fact that the evidence presented by the state in the case at bar was undisputed. It was undisputed that the defendants were travelling under aliases. Mitchell holds that such a circumstance amounts to articulable suspicion. It was also *undisputed* that Detective Wolfe based upon her observations of forty previous "body carrys," including six (6) previous occasions that the body carry was on a child, that the bulge in the child's diaper was *extraordinary* and consistent with a body carry of narcotics. *Bush* held that an officer may rely upon his observations, training and experience to reach a determination of probable cause for arrest. Finally, contrary to *Collier* and *Jester*, this Court has overruled the trial court's findings upon *undisputed* questions of fact.

3. That the undersigned counsel expresses a belief, based upon a reasoned and studied professional judgment, that the panel decision is contrary to the foregoing decisions of this Court noted at paragraph 1 and that a consideration by the full Court is necessary to maintain uniformity of decisions in this Court.

II.

4. That this Court has overlooked the fact that the facts in the case at bar bear no relationship whatsoever to those in, *Royer v. State*, and *Royer* is on its face *confined* to its peculiar facts. *See, Slip opinion*, at pp. 2 (court opinion) and pp. 11-21 (Hubbart, J., *concurring*). This Court's opinion of 'reversed, *see Royer*', must necessarily be incorrect.

5. Further, this Court has overlooked the fact that *Royer* does not dispute any question of contact or consent in the airport context. *See*, Hubbart, J., *concurring*. Clearly, there may be consent after even a primary illegality and the Defendant was repeatedly warned of his right to refuse consent herein. *See, Husted v. State*, 370 So.2d 853 (Fla. 3d DCA 1979). This Court has manifestly erred in failing to reach the decisive factor below, that the trial court affirmatively found that the transaction was *pursuant to the Defendant's voluntary consent. See, Husted v. State; Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed. 854 (1973). This Court should not reverse the trial court herein based upon *obiter dicta* in *Royer. See, Royer v. State*, at pp. 11-21 (Hubbart, J., *concurring*). The trial court's ruling upon an issue of consent should *not* be disturbed where in the case at bar, substantial competent evidence, *which the trial court chose to believe*, supports the trial court's view. *See e.g., United v. Fike*, 449 F.2d 191 (5th Cir. 1971), *cert. den.*, 404 U.S. 943, 92 S.Ct. 943, 30 L.Ed.2d 257 (1971); *State v. Nova; Husted v. State, State v. Battleman, supra.*

6. That in the holding of the *Royer* court, the court acknowledges that the opinion of the United States Supreme Court in *United States v. Mendenhall*, _ U.S. _, 100 S.Ct. 1870 (1980), is contrary to the facial holding of the *Royer* court. Slip opinion, at p. 8, line 5; p. 4, n. 6. Furthermore, the concurring opinions of two (2) members of this Court specially rejected the *obiter dicta* of the *Royer* court opinion and four (4) respected members of this Court did not participate in the *en banc* rehearing. Indeed, the State submits that *Royer* is erroneous in the face of *Mendenhall*, 100 S.Ct. at 1877-1879, and

Reid v. Georgia, _ U.S. _, 100 S.Ct. 2752 (1980). Contrary to the *Royer* court's view, *Reid* did *not* categorically reject all so called "profiel" transactions. *See also, Slip opinion* at pp. 11-21 (Hubbart, J., concurring). In *Reid v. Georgia*, the holding of the court is confied to the premise that *IF THE JUDGMENT OF THE COURT IS TO BE PREDICATED UPON TERRY A "STOP" UPON THE FACTS STATED BY THE GEORGIA APPELLATE COURT, THE "STOP" WAS NOT LAWFUL.* This proper analysis of *Reid* is found upon the *face* of the *Reid* opinion, thus:

> "[Holding]: The Appellate court's conclusion in this case that the DEA agent reasonably suspected the petitioner of wrongdoing rested on the fact that the petitioner appeared to the agent to fit the so-called "drug courier profiel" a somewhat informal compilation of characteristics believed to be typical of persons unlawfully carrying narcotics. Specifically the court thought it relevant that (1) the petitioner had arrived from Fort Lauderdale, which the agent testified is a principal place of origin of cocaine sold elsewhere in the country, (2) the petitioner arrived in the early morning, when law enforcement activity is diminished, (3) he and his companion appeared to the agent to be trying to conceal the fact that they were travelling together, and (4) they apparently had no luggage other than their shoulder bags.
>
> "We conclude that the agent could not as a matter of law, have reasonably suspected the petitioner of criminal acitivity *on the basis of these observed circumstances.* Of the evidence

relied on, only the fact that the petitioner preceded another person and occasionally looked backward at him as the proceeded through the concourse relates to their particular conduct.

"FOR THESE REASONS, THE JUDGMENT OF THE APPELLATE COURT CANNOT BE SUSTAINED INSOFAR AS IT RESTS ON THE DETERMINATION THAT THE DEA AGENT LAWFULLY SEIZED THE PETITIONER WHEN HE APPROACHED HIM OUTSIDE THE AIRLINE TERMINAL. Accordingly, the judgment of the Georgia Court of Appeals is vacated and the case is remanded to that court for further proceedings not inconsistent with this opinion."

100 S.C.t at 2753-2754.

It is quite clear that *Reid* simply states that 'if this is considered to be a 'stop' it is not lawful.' THE UNITED STATES SUPREME COURT NEVER REACHED THE ISSUES OF *CONSENT* OR *CONTACT* upon the facts in *Reid.* See, 100 S.Ct. 2754-2755 (Powell, Burger and Blackmun, J.J. *concurring*).

7. A proper analysis of *Reid* thus centers upon the fact that the Court did not reverse the Georgia appellate court, but *REMANDED FOR FURTHER CONSIDERATION.* How this is essential to a *proper* evaluation of *Reid* centers upon the fact that the *Georgia appellate court* rested its holding upon two (2) distinct alternative grounds, numbered "1" and "2". *See, State v. Reid,* 149 Ga.App. 685, 255 S.E.2d 71 (1979), *cert. den.* June 20, 1979. The Georgia appellate court, *noting*

that South Florida is a notorious drug traffick terminal, first of all, held that the facts as developed from the drug courier profile *were articulable suspicion,* but relevant to the immediate discussion also held that:

> "2. In its ruling on the motion, the trial court found *"that at the time the officer suggested these men go back into the airport with him that by that time they were quote under arrest end quote."* The only evidence heard by the trial court was that given by the agent of the Drug Enforcement Administration who testified that the defendant and his companion consetned to return to the terminal *The Agent was not dressed in a uniform, although he did not produce his credentials.* He was wearing blue jeans and a light weight jacket. He had a gun in the rear area of his waistband, covered by his jacket, *and not visible to the defendant and his companion.* He was alone. There is no suggestion that the defendant was ruluctant to return to the terminal. *There is also no evidence of coercion, youth, lack of education, low intelligence, harsh questioning, or use of physical force.* State v. River, 142 Ga.App. 96, 235 S.E.2d 383 (1977). Whether consent was given to be determined from the totality of the circumstances. Schenkckloth v. Bustamonte, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973). At the conclusion of the state's evidence on the motion, both sides when questioned by the trial judge, indicated they had nothing further to present. The evidence of consent is unrebutted. Therefore, we hold that the trial

court erred in finding that the defendant was under arrest." (emphasis added).

255 S.E.2d at 72-73.

The United Staes Supreme Court left the foregoing alternative holding in the Georgia appellate court, intact even though the transaction may have begun with a "profile". The undersigned has conferred with the Attorney General's Office and the prosecutor in *Reid* and would indicate to this Honorable Court that the matter would be returning to the United States Supreme Court upon the contact/consent issue after remand and consideration by the Georgia appellate court.

8. Indeed, the Appellee submits that *Mendenhall* and *Reid* are entirely consistent with each other and contrary to the *Royer* court's opinion. *See, also, Slip opinion*, at pp. 11-22 (Hubbart, J. *concurring*). This Court's opinion has overlooked the fact that the *Royer panel* properly refused to substitute its judgment for that of the trial court where the evidence, *clearly supports a finding of free and voluntary consent. See, Husted v. State*, 370 So.2d 853 (Fla. 3d DCA 1979); compare, *State v. Battleman*, 374 So.2d 636 (Fla. 3d DCA 1979). *With respect to search and seizure, there is no difference between Florida law and the Florida Constitution and the United States Constitution. See, Hetland v. State*, 366 So.2d 831 (Fla. 2d DCA 1979), *approved and adopted, Hetland v. State*, ___ So.2d ___ (Fla. 1980), S.Ct. Case No. 56,245, opinion filed September 11, 1980. This Court has overlooked the fact that the views of the *Mendenhall* court are therefore, *binding* upon this Court. Most respectfully, the state submits that under *Mendenhall*,

this Court should *not* substitute its judgment for that of the trial court.

9. This Court has overlooked the fact that these officers had a duty to act and were *undisputably acting in good faith.* The exclusion of the evidence herein as this Court has stated it in its opinion, would serve no purpose except to frustrate the interdiction of narcotics traffic. *See, United States v. Williams,* 622 F.2d 830 (5th Cir. 1980) *en banc, cf., also, slip opinion,* at pp. 14-21 (Hubbart, J. *concurring,* urging balancing of the *substantial* competing interests herein).

10. The issue herein as to the constitutional balance that should be struck in the airport context herein is of major and compelling statewide importance in Florida. The Florida Supreme Court has a related issue in an airport case pending before it in *Shapiro v. State,* Fla. S.Ct. Case No. 54,097. In view of the circumstances of this Court's opinion, and in view of *Mendenhall* and *Reid,* this Honorable Court should certify the precise questions of law and fact herein as ones of great public importance.

WHEREFORE, upon the foregoing, the Appellee, THE STATE OF FLORIDA, prays that this Honorable Court will grant rehearing en banc and/or rehearing.

RESPECTFULLY SUBMITTED, on this 29th day of October, 1980, at Miami, Dade County, Florida.

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Attorney General

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(305) 377-5441

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA

THIRD DISTRICT

JULY TERM, A.D. 1980

FRIDAY , NOVEMBER 14, 1980

CASE NO. 79-2269

SHEROLY HARRISON,
Appellant,

vs.

THE STATE OF FLORIDA,
Appellee.

Counsel for appellee having filed in this cause motion for rehearing, and same having been considered by the court which determined the cause, it is ordered that said motion be and it is hereby denied.

A True Copy

ATTEST:

Clerk District Court of
Appeal, Third District

cc: Calvin L. Fox
Peter Raben

IN THE DISTRICT COURT OF APPEAL OF FLORIDA

THIRD DISTRICT

CASE NO. 79-2269

SHEROLYN HARRISON,
Appellant,

-vs-

THE STATE OF FLORIDA,
Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT OF FLORIDA
IN AND FOR DADE COUNTY

INITIAL BRIEF OF APPELLANT

BENNETT H. BRUMMER
Public Defender
Eleventh Judicial Circuit of Florida
1351 N.W. 12th Street
Miami, Florida 33125

PETER RABEN
Assistant Public Defender

Counsel for Appellant

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

NO. 80-1449

THE STATE OF FLORIDA,

Petitioner,

vs.

SHEROLYN DENISE HARRISON,

Respondent.

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

The respondent, SHEROLYN DENISE HARRISON, asks leave to file the attached petition for a writ of certiorari to the United States Supreme Court, without prepayment of costs, and to proceed in forma pauperis pursuant to Rule 46.

Respondent was declared indigent and was represented by the undersigned Office of the Public Defender at trial and on appeal. Respondents financial status has not changed in the interim.

Respectfully submitted,

BENNETT H. BRUMMER
Public Defender
Eleventh Judicial Circuit
of Florida
1351 N.W. 12th Street
Miami, Florida 33125

BY: _____
BENNETT H. BRUMMER
Public Defender

BY: _____
PETER RABEN
Assistant Public Defender
Counsel for Respondent
305/545-3003

IN THE SUPREME COURT OF THE UNITED STATES

CASE NO. 80-1449

THE STATE OF FLORIDA,)
Petitioner,)
vs.)
SHEROLYN DENISE HARRISON,)
Respondent.)
)

AFFIDAVIT IN SUPPORT OF A MOTION FOR LEAVE TO PROCEED IN FORM PAUPERIS

I, Sherolyn Denise Harrison, being sworn according to law, depose and say, in support of my application to proceed without being required to prepay costs or fees:

1) I am the petitioner in the above-entitled cause.

2) Because of my poverty, I am unable to pay the cost of said cause.

3) I am unable to give security for the same.

4) I believe I am entitled to the redress I seek in said cause.

5) I have previously been declared indigent and have been represented by the Office of the Public Defender at trial and on direct appeal.

6) The nature of said cause is briefly stated as follows:

I am Respondent on a petition for certiorari after having a Florida appellate court say that my person was illegally seized and searched.

Sherolyn Denise Harrison
SHEROLYN DENISE HARRISON

Subscribed and Sworn to Before
me this 26th day of March, 1981.

Linda W. Sanders
NOTARY PUBLIC, STATE OF FLORIDA AT LARGE

My Commission Expires:
Notary Public, State of Florida
My Commission Expires Nov. 6, 1984
Bonded thru Ray-Lee Insurance, Inc.

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OCTOBER TERM, 1980

THE STATE OF FLORIDA,

Petitioner,

vs.

SHEROLYN DENISE HARRISON,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE DISTRICT COURT OF APPEAL
OF FLORIDA, THIRD DISTRICT

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI

BENNETT H. BRUMMER
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NO. 80-1449

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

THE STATE OF FLORIDA,

Petitioner,

vs.

SHEROLYN DENISE HARRISON,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE DISTRICT COURT OF APPEAL
OF FLORIDA, THIRD DISTRICT

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI

INTRODUCTION

Respondent, Sherolyn Denise Harrison, was the Appellant in the Third District Court of Appeal of Florida, and the Defendant in the trial court. The Petitioner, the State of Florida, was the Appellee in the Third District Court and the Prosecution in the trial court. In this response the parties will be referred to as they stood in the trial court. The Appendix filed by the State constitutes an adequate factual record and will be referred to with page designations. All emphasis is supplied unless otherwise indicated.

STATEMENT OF THE CASE

Sherolyn Denise Harrison was informed against in Miami, Dade County, Florida on September 28, 1979 for the criminal offenses of trafficking in cocaine and possession of cocaine with intent to sell. The contraband which served as a basis for the proseuction was seized from the defendant by police officers in the course of a search of the defendant's person.

Pursuant to a defense motion to suppress evidence illegally seized, an evidentiary hearing was held in the trial court on the merits of the defendant's motion. (A. 1-71).

The State called one witness[1] to support its contention that the contraband sought to be introduced into evidence was legally discovered and seized.

Judy Wolfe identified herself as a police officer employed by Dade County, assigned to the narcotics division of the Organized Crime Bureau and stationed at the airport on August 9, 1979. (A. 9, 10). Wolfe mentioned the seminars she attended and her specialized duties of narcotics enforcement at the airport for the last year; specifically, the observation of a multitude of people (while in plainclothes) to discover drug flow out of the source city of Miami. (A. 11, 12).

Despite reference to a "profile" (A. 12) no testimony was adduced as to what constitutes a profile of a smuggler's normal characteristics.

Wolfe testified that while at the airport with her partner, Detective Titus (A. 13) she observed a man (hereinafter known as Evans) barge in front of a line of people at the National Airlines ticket counter. (A. 15). After Evans was made to wait a period, he began to transact a purchase when he was joined by a woman (hereinafter known as Raymond). (A. 16).

---

[1] The State stipulated before the hearing that no search warrant was obtained in the investigation. (A. 8). Thus assuming the burden of establishing Fourth Amendment compliance, the State called the only witness and questioned on direct examination. (A. 9).

Wolfe overheard Evans tell Raymond to go on toward the gate and he would meet up with her; Wolfe saw Evans hand over a number of hundred dollar bills, and receive one[2] ticket for a flight leaving in ten minutes for Los Angeles. Evans was carrying one small bag. (A. 16, 17).

Evans moved quickly from the counter toward the concourse where he joined Raymond who was now in the company of the defendant, Sherolyn Harrison. (A. 17). Harrison was carrying a small child and a purse; Wolfe did not recall if she carried any luggage. (A. 18).

The three individuals proceeded together up an escalator, past a security checkpoint, all the while being followed and watched by Wolfe and Titus. (A. 19). After they cleared the security checkpoint, Titus stopped Evans and spoke with him. (A. 19); Wolfe waited a few seconds, watching Raymond and Harrison walking further down the concourse, and then Wolfe stopped them. (A. 19).

Wolfe approached Raymond and Harrison, identified herself as Detective Wolfe, of the police department and testified "I would like to ask them a couple of questions, if they had no objection, before they caught the flight." (A. 19). Wolfe opened a case and displayed a badge when stopping the two women. (A. 20).

Harrison remained silent upon Wolfe's request; Raymond said she didn't mind, as long as she didn't miss her flight. Wolfe asked for identification, and none was produced. (A. 21). Wolfe then asked if she could search their belongings, telling the women they could refuse. (A. 23). As Wolfe testified they consented, a search of the two purses resulted.

Nothing of significance was found in the defendant's purse. (A. 24, 46, 47). In Raymond's purse Wolfe found airplane

---

2 However, on cross examination Wolfe testified that she expected a party of three to be traveling together due to the amount of money exchanged between Evans and the ticket agent. (A. 39-41).

tickets indicating that a Mr. and Mrs. Kahn and a Mr. Jones had flown from Los Angeles to Miami four days earlier; also found in Raymond's purse were two marijuana cigarettes. (A. 24). Wolfe said the two cigarettes were of no significance, and Wolfe had no intention of arresting Raymond for the misdemeanor of possession. (A. 24, 46-49).

At this point the group of women were joined by Evans and Detective Titus and the questioning continued as the entire group walked together toward the gate. (A. 24). Harrison told Wolfe she was from Miami and going to Los Angeles for a few days (A. 24); Raymond said she was going home to Los Angeles. (A. 25). They were asked by the officer about luggage; the women said there was none other than that being carried. (A. 25).

As the questioning and surveillance continued Wolfe learned from Detective Titus that Evans had tickets in the name of Mr. and Mrs. Kahn and Mrs. Johnson, had no identification, and then claimed to be Oswald. Titus was able to confirm Wolfe's suspicions that the three were traveling under aliases. (A. 27).

Wolfe believed, based upon the aliases, the small amount of luggage and the destination of these people "that, perhaps, these people were smuggling narcotics." (A. 27).

Though Wolfe testified that at this point Harrison was "free to leave" the officers maintained their contact and surveillance and continued on with the three to the gate. (A. 27, 28).

Wolfe then mentioned her observation, as she was walking down the concourse questioning the women, of a bulge on the abdomen of the child being carried by Harrison. (A. 28).

Wolfe said the bulge was suspicious; the child looked as if she were wearing a diaper or Pamper beneath her clothes, but the swaddling appeared twice as thick in front. Based upon her experience, Wolfe suspected the bulge was contraband. (A. 28, 29).

Wolfe told Harrison to put the child down; Wolfe reached into the childs trousers and felt a plastic bag containing a

granular substance consistent with cocaine. Harrison was arrested and the child seized. (A. 30).

Wolfe testified that she seized the baby due to the harmful nature of cocaine if it were to be ingested into the child's orifice; however, when Wolfe discovered the powder was in a bag, and the child was wearing plastic pants and a Pamper, the substance was allowed to remain in the child's pants. (A. 30, 31, 35).

Evans and Raymond were arrested for conspiracy. (A. 33). Nothing was taken from Harrison's person on her arrest. (A. 34).

Wolfe was cross-examined as to two separate facets of her encounter with the defendant'; first of all, why Wolfe even stopped Harrison for questioning, and then the actual search and seizure.

As to what Harrison did to arouse Wolfe's suspicions was the following questioning aimed:

> Q: Detective Wolfe, up to the point where you walked up to the two young ladies and identified yourself, what specifically did the defendant Sherolyn Harrison do that aroused your suspicion? What did she do--not what the other people did--but what was she doing that made you suspicious of her, specifically?
>
> A: I would say that what made me suspicious of her, not so much an active thing she did, perhaps more what she did not do.
>
> Q: What did she not do?
>
> A: That was--she was hanging very far away from the other two people for the period of time the ticket was being purchased as though to disassociate herself. I was surprised to see her together with the other two people.
>
> Q: In fact, right up until the time that Mr. Evans caught up with the two women, you believed that Sherolyn Harrison, had nothing to do with Evans and Raymond?

A: That is right. I didn't see her enter the scene until, really, quite at the end.

Q: So your questioning or your introduction to Miss Harrison initially was based upon the fact that she was being aloof or apart from the other two people and, subsequently, met up with and that is why you wanted to talk to Sherolyn Harrison.

Correct me if I am wrong.

A: That was part of it, certainly.

Q: What else had she done besides that?

A: She had, herself, alone, apart from the other two, not done anything else.

Q. For all you know, she could have been seeing those two people off at the gate, "See you around. Have a nice trip to L.A."

A: Yes. That is possible.

(A. 38, 39).

Wolfe confirmed that she only suspected the use of an alias after inspecting the ticket stubs in Raymond's purse. (A. 47, 48).

Because of the suspicion generated in the officers mind, Wolfe felt that contraband was being carried, but did not know where. (A. 50). Thus, upon seeing a bulge in the diapers of the baby, Wolfe believed it to be hidden narcotics. (A. 54). No mention of a hidden weapon was made.

Wolfe agreed that Harrison only put the child down on Wolfe's command; upon compliance, Wolfe reached into the child's trousers without consent. (A. 58). On this evidence each side rested. (A. 62).

The defense argued to the court the motion should be granted for two reasons; 1) the initial approach and detention of the defendant was without basis under the Fourth Amendment, and resulted in an unlawful seizure, and 2) the illegality inherent in Wolfe searching the child carried by the defendant on observing a bulge, which falls short of the probable cause necessary to conduct a warrantless search. (A. 62-69).

The State responded by arguing that Harrison had no standing to contest the search of the child in her arms. The court rejected this approach. (A. 68). So the State argued that the suspicious circumstances combined with the bulge created a duty towards Officer Wolfe to search the child, "for the health, safety and welfare of the toddler Sherolyn Harrison was carrying." (A. 70).

The court found, based upon the circumstances of the detention and the tender age of the child, that there was probable cause for the initial stop and inquiry; that after the stop terminated, there existed probable cause to believe drugs were hidden on the child. (A. 70, 71). The motion was denied.

On direct appeal to the Third District Court of Appeal, the courts ruling was reversed per curiam. (A. 72, 73). In a concurring opinion Judge Hubbart indicated that, aside from the propriety of the stop and detention of the defendant, a full blown search for narcotics is not permitted absent probable cause, which was lacking in this case. (A. 73).

From this ruling of the District Court of Appeal the State petitions this Court for certiorari review.

ARGUMENT

FLORIDA'S THIRD DISTRICT COURT OF APPEAL PROPERLY DETERMINED UNDER THIS COURT'S PRONOUNCEMENTS IN TERRY v. OHIO, 392 U.S. 1 (1968) AND BROWN v. TEXAS, 433 U.S. 47 (1979) THAT THE DETAINING, INTERROGATING AND SEARCHING OF THE RESPONDENT WITHOUT HER CONSENT WAS A SEIZURE UNDER BOTH FLORIDA AND FEDERAL CONSTITUTIONAL LAW. THE DISTRICT COURT ALSO PROPERLY CONCLUDED THAT SUCH A SEIZURE WAS WHOLLY WITHOUT ARTICULABLE SUSPICION UNDER BOTH FLORIDA AND FEDERAL LAW, AS SET FORTH IN REID v. GEORGIA, ___ U.S. ___, 100 S.Ct. 2752 (1980) AND UNITED STATES v. MENDENHALL, ___ U.S. ___, 100 S.Ct. 1870 (1980).

Sherolyn Harrison was stopped, detained, questioned, searched and eventually arrested by police officers, acting without a warrant. (A. 8). State action by officers without prior judicial

approval is per se unreasonable, absent Fourth Amendment excuse; the burden devolves upon the State to establish the justification. Coolidge v. New Hampshire, 403 U.S. 443 (1971); Taylor v. State, 355 So.2d 180 (Fla. 3d DCA 1978).

The evidence adduced by the State warranted granting of the defendant's motion to suppress evidence on two basis: 1) the initial stop of the defendant was not based upon a reasonable suspicion of criminal activity, and the contraband seized in the course of the police investigation during the impermissible detention was inadmissable; and 2) assuming arguendo no nexus between the illegal detention and the search which produced the contraband sought to be suppressed, the search was nevertheless conducted without Fourth Amendment justification. Each argument will be addressed separately.

A

Florida's Third District Court Of Appeals Properly Reversed The Denial By The Trial Court Of The Defendant's Motion To Suppress Evidence Seized From The Defendant Where The Initial Stop Of The Defendant Was Not Based Upon A Reasonable Suspicion That She Was Engaged In Criminal Activity And The Contraband Seized From The Defendant During The Course Of The Stop Was Therefore Obtained In Violation Of The Fourth And Fourteenth Amendment To The Constitution Of The United States And Article I, Section 12 of the Constitution Of The State Of Florida.

On August 9, 1979 Officer Wolfe approached Sherolyn Harrison and Nancy Raymond as they were walking along an airport concourse, attempting to catch a flight which left in less than ten minutes. (A. 14, 18, 19). Officer Titus had just seconds earlier stopped their companion, Evans, to speak with him a few feet away from where the women were stopped. (A. 19). One can infer from Officer Wolfe's earlier observation (that Evans purchased all the travel tickets the three would be using and he was not observed giving the purchased tickets over to Raymond or Harrison (A. 11)) that Evan's possessed the airplane tickets for all three of them, and when Titus stopped Evans, they were without the resources necessary to board their flight.

Wolfe approached the two women as they were walking and told them her name, her position as a police officer, and made a request to question them before their flight left. (A. 19). During this approach, Wolfe displayed a police identification badge. (A. 20). In this fashion were Raymond and Harrison initially impeded in their travel. To contend that such police conduct does not constitute a seizure within the purview of the Fourth Amendment would evidence naivete.

SEIZURE

A person has been seized within the meaning of the Federal and Florida Constitutions "whenever a police officer accosts an individual and restrains his freedom to walk away . . ." Terry v. Ohio, 392 U.S. 1, 16 (1968); Brown v. Texas, 433 U.S. 47 (1979).

The Florida District Court found the appropriate test to be set forth in the case of United States v. Wylie, 596 F.2d 62, 68 (U.S.App.D.C. 1977):

> "[T]he crucial consideration is . . . whether the person was 'under a reasonable impression that he [was] not free to leave the officer's presence'".

State v. Frost, 374 So.2d 593, 597 (Fla. 3d DCA 1979).

The Frost opinion discusses two different plateaus at which a seizure may occur. The more lenient level deals with the social pressures inherent in a police-citizen contact. The more stringent approach would require police action which actually interferes with a persons right to leave. Under either analysis, Sherolyn Harrison was seized.

When a police officer approaches a citizen by displaying a badge and requesting 1) identification, 2) permission to interrogate, and 3) permission to search one's personal belongings, as occurred in this instance (A. 19-23), a variety of emotions are visited upon a citizen, including apprehension, anxiety, pressure, acquiesence and all of society's unexpressed rules of etiquette. The Florida Court quoted in Frost the following passage from United States v. Coleman, 450 F.Supp. 433, 439 (E.D.Mich. 1978).

> [T]he Court is satisfied that from the moment that Agent Markonni identified himself as a DEA Agent and began to ask defendant questions on the sidewalk outside the terminal, a Terry stop had been effected. True, defendant could have ignored the agent and refused to converse with him, but such conduct on Colemen's part would have been, at the very least, a breach of etiquette, an act of discourtesy and incivility which would not be expected of the ordinary, reasonable person innocent of crime. In the opinion of this Court, when an officer, upon a show of authority accosts a suspect and takes advantage of social pressures which inhibit the suspect from declining to deal with him, he restrains the suspect's liberty to the extent required to constitute a Terry stop.[1]

Cf. Delaware v. Prouse, 440 U.S. ___, 99 S.Ct. 1391, 1398 (1979) ("stops generally entail law-enforcement officers signalling a moving automobile to pull over to the side of the roadway, by means of a possibly unsettling show of authority. Both interfere with freedom of movement, are inconvenient, and consume time. Both may create substantial anxiety.")

So that, when Wolfe approached Harrison and Raymond requesting identification and displaying her police badge, they were seized. See United States v. Dewberry, 425 F.Supp. 1336 (E.D.Mich. 1977)(on agents approaching Dewberry and asking for identification, Terry stop occurred); Adams v. Williams, 407 U.S. 143 (1972)(approaching suspect in a car and asking him to step outside a seizure); State v. Oliver, 368 So.2d 1331 (Fla. 3d DCA 1979)(asking two boys on bicycles to stop so that they could be interviewed a seizure); Brown v. Texas, 443 U.S. ___, 99 S.Ct. 2637 (1979)(asking suspect for identification a Terry seizure); United States v. Pope, 561 F.2d 663 (1st Cir. 1977)(agent approaching subject to talk while displaying police credentials a seizure); United States v. McCaleb, 552 F.2d 717 (6th Cir. 1977)(request by agent for identification a seizure).

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[1] Subsequently, Florida's Third District Court of Appeal rejected the idea that a person is seized under constitutional analysis when he is approached for conversation by a police officer. See Login v. State, ___ So.2d ___ (Fla. 3d DCA 1981)(Case No. 79-1551, Op. Filed February 17, 1981).

Going further, the actual seizure of Harrison occurred when Detective Titus detained Evans. Wolfe testified that only Evans purchased tickets, and no exchange of tickets occurred between Evans and Harrison as they approached the boarding gate. (A. 15-17, 37-41). So when Evans was detained for questioning by Titus, Harrison too was no longer free to depart on the scheduled flight unless Evans or the tickets were released. Thus, as in Frost, the defendant was actually seized in the sense that police officers were acting to separate her from her ticket; in Terry jargon, her "freedom to leave" was no longer a decision that was hers to make. Frost, supra at 598.

A seizure being visited upon Sherolyn Harrison, an analysis of the facts known to the police officers which occasioned the stop is next required to display its illegality from the inspection.

REASONABLE SUSPICION

> It was a maxim with Foxey . . .
> "Always suspect everybody." Dickens,
> The Old Curiosity Shop, (1841)[2]

When a police officer has a reasonable suspicion that an individual is engaged in criminal activity, a limited investigatory stop on less than probable cause is constitutionally permissible. Terry v. Ohio, supra; Parker v. State, 363 So.2d 383 (Fla. 3d DCA 1978); Mullins v. State, 366 So.2d 1162 (Fla. 1979); See Florida Statutes 901.151 (1979). The officer must be able to point to "specific and articulable facts" which must "be judged against an objective standard" to guard against feelings or hunches lacking in substance. United States v. Tharpe, 536 F.2d 1098 (5th Cir. 1976).

The objective facts known to Officer Wolfe when she detained Sherolyn Harrison for an investigatory stop do not rise to the level of hunch, let alone articulable suspicion. Wolfe saw Evans attempting to quickly purchase tickets with cash for a Los Angeles flight leaving in ten minutes, and check no luggage,

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2 Costantino, District Judge, United States v. Westerbann-Martinez, 435 F.Supp. 690 (E.D.N.Y. 1977).

though holding one bag. (A. 14-17). Wolfe knew Evans was with Nancy Raymond; when Raymond and Evans joined Harrison, who was carrying a baby, and they began walking together down the concourse was the first occasion Wolfe had to associate Harrison with the others. (A. 18, 38-42).

Officer Wolfe testified that the only "suspicious" activity attributable to Harrison was in fact her inactivity; that is, Wolfe considered it suspicious that Harrison did not accompany Evans and Raymond while the tickets were being purchased. (A. 36-39). In fact, Wolfe agreed that when she first encountered Harrison, a possibility existed that Harrison was merely at the airport to see the others off. (A. 39).

The issue summarily restated, does walking down an airport concourse with a man and woman who purchased with cash tickets to Los Angeles on a flight leaving in ten minutes, while checking no luggage yet carrying two pieces, create reasonable suspicion that one is engaged in a criminal enterpirse?[3] A review of existing law reveals not.

Of course the observation that a person exhibits some of the general characteristics and conduct of the reputed "drug courier profile"[4] does not create a reasonable basis for an investigatory stop. Reid v. Georgia, ___U.S. ____, 100 S.Ct. 2752 (1980); Frost v. State, supra at 596, fn. 4; Mitchell v. State, 377 So.2d 1006 (Fla. 2d DCA 1979); United States v. Ballard, 573 F.2d 913 (5th Cir. 1978); United States v. Pope, 561 F.2d 663 (6th Cir. 1977); United States v. McCaleb, 552 F.2d 717 (6th Cir. 1977); United States v. Chatman, 573 F.2d 565 (9th Cir. 1978); United States v. Rice, 594 F.2d (2d Cir. 1979):

> [3] No doubt the cumulative experience of the special agents in the

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3 Of course, the officers first suspected the use of an aliases by the travelers, and that no other luggage was being carried after the investigatory stop contested here.

4 No testimony was adduced by Wolfe of what characteristics of the profile Evans, Raymond or Harrison met, if any; not what the profile actually consists of.

> surveillance details at the airports must give rise to a kind of institutional expertness that can be in part summed into a check list of recurrent traits of conduct found in narcotics couriers. But such a check list of recurrent characteristics can do no more than alert the special agent to initiate surveillance. More is required to warrant the intrusion of an investigative stop. [cites omitted]

Clearly no reasonable basis justified the stop of Harrison due to the actions of Evans or Raymond. In any event, "suspicious" activity is personal to the actor, and not vicarous to all present. Even if the conduct of Evans justified surveillance the only "suspicious activity" attributed to Harrison was her waiting elsewhere in the airport while Evans negotiated his travel arrangements. (A. 31-42). Merely accompanying a suspect does not impute suspicion. State v. Perry, 296 So.2d 505 (Fla. 3d DCA 1974)(defendant standing with subject arrested on a warrant did not provide for frisk of defendant); Ybarra v. Illinois, ___ U.S. ___, 100 S.Ct. 338 (1979)(patron of a tavern not subject to frisk in execution of a warrant due to presence alone).

In the course of the invalid investigatory encounter Wolfe espied what occurred to her to be a suspicious bulge in the diaper of the baby. (A. 27-29). The police foray being invalid in its inception, the seizure of the contraband was, too, illegal police conduct, and suppression of the contraband seized was required. Wong Sun v. United States, 371 U.S. 471 (1963); State v. Coladonato, 348 So.2d 326 (Fla. 1977)(when defendant improperly detained, observation by police of stolen merchandise in plain view inadmissible as a fruit of illegality); Mullins v. State, 366 So.2d 1162 (Fla. 1979)(detention of defendant without reasonable suspicion invalidated plain view seizure of contraband). Accord, see State v. Whitley, 349 So.2d 840 (Fla. 3d DCA 1977); State v. Horton, 375 So.2d 1112 (Fla. 3d DCA 1979); State v. Laurich, 376 So.2d 405 (Fla. 1st DCA 1979); Currens v. State, 363 So.2d 1116 (Fla. 4th DCA 1978); State v. Delp, 364 So.2d 542 (Fla. 4th DCA 1978).

B

The Florida District Court of Appeal Properly Reversed The Trial Court's Denial Of The Defendant's Motion To Suppress Evidence When The Contraband Was Seized Without Probable Cause, In Violation Of The Fourth And Fourteenth Amendments To The United States Constitution And Article I, Section 12 Of the Florida Constitution.

Assuming arguendo that the search and seizure of the contraband from the diapers of the child carried by the defendant had no relationship to the illegal detention, surveillance and encounter of the defendant by the police discussed above, the search and seizure nevertheless was independently improper and ran afoul of the Federal and Florida Constitutions.

As a result of their investigatory stop of the travelers and a search of their persons, nothing of futher suspiciousness was found pertaining to Harrison. (A. 38-48). Only with regard to the search of Raymond did the officers learn that the three were traveling under a possible alias, and days earlier three people had flown from Los Angeles to Miami; two marijuana cigarettes found in Raymond's purse were considered inconsequential by the officers, and no intention to arrest for the misdemeanor existed in Wolfe's mind. (A. 43-47).

With this imformation, Wolfe first spotted a bulge in the childs diaper. (A. 50). Wolfe told Harrison to put the child down, and an immediate search of the child's clothing revealed the hidden contraband sought to be suppressed. (A. 51-56).[5] Wolfe said she thought the bulge was narcotics, rather than a weapon; the item seized was 1 - 1 1/2 inches in thickness and extended out of the baby's diaper about 2 inches. (A. 49, 50).

To sustain the search of the diaper, Wolfe must have had probable cause to believe contraband was hidden on the baby. Reliance on the investigatory frisk condoned by Terry, supra, and

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5 The court rejected out of hand the contention made by the State that Harrison had no reasonable expectation of privacy in the baby she was carrying. (A. 68).

Adams v. Williams, supra is unfounded. Absent an objective fear on the part of the officer, or the belief of a hidden weapon, searches are not contenanced. State v. Meeks, 356 So.2d 45 (Fla. 3d DCA 1978); Sibron v. New York, 392 U.S. 40 (1968); State v. Ingram, 364 So.2d 821 (Fla. 4th DCA 1978). Furthermore, the search allowed is limited to a frisk, or patdown to reveal the existance of a weapon; a full blown search as Wolfe conducted is not permitted. State v. Froley, 374 So.2d 1122 (Fla. 4th DCA 1979); State v. Lundy, 334 So.2d 671 (Fla. 4th DCA 1976).

So to validate the search of the child under constitutional principles, this Court must find an attenuation from the initial illegality, and that when Wolfe saw what she termed a bulge in the baby's diapers, she had probable cause to believe contraband was hidden therein.

Surely the proliferation of narcotics trafficking has not brought us to the era where bulges in baby's in airports are, to reasonably prudent people, narcotics, rather than the miscellaneous attendants to a child yet toilet-trained. There is nothing magical about a bulge that instantly creates an association with narcotics. See Carr v. State, 353 So.2d 958 (Fla. 2d DCA 1978)(observation by officer of two hand-rolled cigarettes unevenly rolled did not amount to probably cause to believe there was contraband therein) and Harris v. State, 352 So.2d 1269 (Fla. 2d DCA 1977)(observation by officer of rolled up plastic bag possessed by defendant did not amount to probable cause to believe contraband within bag).

Probable cause is lacking if the circumstances relied on are

> "susceptible to a variety of credible interpretations not necessarily compatible with nefarious activities." [cites omitted]

United States v. Moore, 483 F.2d 1361 (9th Cir. 1973). Moreover,

> "[P]robable cause at the time of arrest is determined by examining 'whether at that moment the facts and circumstances within . . . [the agents] knowledge and of which

> they had reasonable trustworthy information were sufficient to warrant a prudent man in believing that the petitioner had committed or was committing an offense'".

Beck v. Ohio, 379 U.S. 89, 91 (1964). See Conner v. State, 349 So.2d 709 (Fla. 1st DCA 1977)(observation by officer of defendant take something out of his hat and put it in his shoe not probable cause to stop or search) and State v. Neri, 290 So.2d 500 (Fla. 2d DCA 1979)(observation by officer of two men walking away from an unlit home in a high burglary area did not justify their stop and subsequent arrest for possession of contraband.)

In fact, Chief Judge Hubbart of the Florida District Court of Appeal concurred in the reversal of Harrison's conviction, stating

> I concur in the court's reversal in this cause solely on the ground that there was no reasonable basis on this record for the police to have conducted a full blown search of the defendant - even assuming, as the state contends, that the police either effected no prior temporary stop of the defendant at the airport or did so based on founded suspicion. As such, the search here was unreasonable and its fruits should have been suppressed by the trial court upon the defendant's timely motion. Sibron v. New York, 392 U.S. 40, 88 S.Ct. 1889, 20 L.Ed.2d 917 (1968); Isham v. State, 369 So.2d 103 (Fla. 4th DCA 1979), cert. denied, 381 So.2d 770 (Fla. 1980); Schnick v. State, 362 So.2d 423 (Fla. 4th DCA 1978); Meeks v. State, 356 So.2d 45 (Fla. 2d DCA), cert. denied, 364 So.2d 892 (Fla. 1978); Carr v. State, 353 So.2d 958 (Fla. 2d DCA 1978); Harris v. State, 352 So.2d 1269 (Fla. 2d DCA 1977); Conner v. State, 349 So. 2d 709 (Fla. 1st DCA 1977).

(A. 73).

CONCLUSION

The Florida District Court of Appeal has properly applied, in reversing the trial court's denial of the defendant's motion to suppress evidence, decision pronounced by this Court and the Florida Supreme Court. No substantial federal issue has been presented to invoke this Court's jurisdiction.

Respectfully submitted,

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BY: _____
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Assistant Public Defender

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

NO. 80-1449

THE STATE OF FLORIDA,)
Petitioner,)
vs.) AFFIDAVIT OF FILING BY FIRST CLASS UNITED STATES MAIL PURSUANT TO RULE 28.2
SHEROLYN DENISE HARRISON,)
Respondent.)
)

CAME AND APPEARED, BEFORE ME, the undersigned authority, ELLIOT H. SCHERKER, Assistant Public Defender and PETER RABEN, Assistant Public Defender, who first being duly sworn, deposes and says:

That on April 7, 1981, he placed in a United States Post Office box, with first class postage prepaid, one (1) copy of the Brief of Respondent, Sherolyn Denise Harrison, in the above reference case, and said brief was duly and properly addressed to the Clerk of the United States Supreme Court. Further, he is a duly sworn and authorized member of the Bar of this Court

ELLIOT H. SCHERKER
Assistant Public Defender

PETER RABEN
Assistant Public Defender

STATE OF FLORIDA :
SS
COUNTY OF DADE :

SWORN TO AND SUBCRIBED TO before me on this 7th day of April, 1981, at Miami, Dade County, Florida

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE

My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES OCT. 10 1982
BONDED THRU GENERAL INS. UNDERWRITERS

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

NO. 80-1449

THE STATE OF FLORIDA,	)	
Petitioner,	)	
vs.	)	CERTIFICATE OF SERVICE
SHEROLYN DENISE HARRISON,	)	
Respondent.	)	
	)	

I HEREBY CERTIFY, that one (1) true and correct copy of the Brief of Respondent, was furnished by mail to Calvin L. Fox, Assistant Attorney General, Attorney for Petitioner, Suite 820, 401 N.W. Second Avenue, Miami, Florida, 33138, on this 6th day of April, 1981, by United States Mail, First Class Delivery prepaid.

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